DON'T LET A LAWSUIT TAKE AWAY EVERYTHING

STRATEGIES FOR GUARDING YOUR WEALTH AGAINST LEGAL THREATS

ATTY. BLAKE HARRIS

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WHAT PROFESSIONALS SAY

"This is the book you need to help you sleep at night if you are a high net-worth individual (or on your way) and want peace of mind over your assets. [The Author] shares his in-depth knowledge of offshore trusts and offshore banking to help guide you on your path to developing the perfect asset protection plan."

Puai Wichman
Founder and CEO
Ora Partners Wealth Solutions
Rarotonga, Cook Islands

"...delivers a captivating and detail-oriented guide to Asset Protection that is both thorough and easy to read... I found myself not wanting to put it down and am grateful for the excellent work he has done with this book, as well as for the excellent work he has done for clients I have sent his way over the past decade."

Mike Wallen
President
Highland Tax Group, Inc.
Denver, Colorado

"Having the pleasure of knowing Attorney Blake Harris for over a decade, I was delighted to learn that he was willing to share his extensive experience… In this book, Mr. Harris shares more information on this unique area of law than most attorneys ever know."

Attorney John Montague
Fernandina Beach, Florida

"[This] book covers the various options and tools available for protecting various types of assets including cash, real estate, and cryptocurrency."

Matthew Smith
Southpac Trust
Tauranga, New Zealand

"Having known Attorney Blake Harris for nearly a decade, I was excited to learn that he had written a book that shares so much of his valuable knowledge. His newest book… takes a difficult subject and transforms it into a compelling read. I will definitely be recommending [this book] to all of my clients."

Brandon Drespling
Triumph Capital
Denver, Colorado

"For anyone who wants to understand what Asset Protection is all about, and how Asset Protection works, I highly recommend that you read [this book] by Attorney Blake Harris. Attorney Blake Harris shares his insight and wisdom from years of active practice in the offshore asset protection industry in a simple and easy-to-understand manner."

Trevor Bradley
Justice of the Peace
Commissioner of the Supreme Court
in Belize

DEDICATION

This book is dedicated to you.
You have worked hard for your money.
Now is the time to protect it.

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CHAPTER ONE

A WORD ABOUT WEALTH

> Money is only a tool. It will take you wherever you wish, but it will not replace you as the driver.
>
> **~ Ayn Rand**

The United States continues to be one of the most litigious countries in the world. According to the Court Statistics Project as reported in June 2023, in 2021 alone there were over 13 million civil lawsuit filings. Billions of dollars are ordered to be paid out in judgments every few days. Sadly, these trends continue to increase year over year. Legal professionals expect the number of civil case filings, medical malpractice claims, and employee lawsuits to continue rising.

In this environment, one is never more than a single lawsuit away from putting years of hard work at risk. Alternatively, creditors may attempt to take away acquired assets for various reasons. Given the volatility of business fortunes, people

could unintentionally make mistakes resulting in threats to their long-term financial future.

Anyone from an everyday driver on their way to work to a multimillion-dollar business owner could one day find themselves the target of a lawsuit. Certain individuals and families are more at risk than others. Net worth is a risk factor, but not the only factor. Occupation, business holdings, and real estate investments can be factors. Doctors, dentists, and other medical professionals are at higher risk than others. So are business owners, employers, social media influencers, and real estate investors.

Defending a lawsuit is not only financially challenging but highly stressful and uncertain. Without proper planning, the entirety of net worth is at risk. Insurance policies may have limits or will not cover certain claims, putting assets at risk in a lawsuit. When a suing litigant obtains a judgment against you, it will be your assets that they can come after to satisfy the judgment. While some limited categories of assets would be off limits to judgment holders, most everything is fair game.

In the United States, the cost of defending a lawsuit can quickly amount to hundreds of

thousands or millions of dollars. It is disheartening to see successful professionals and entrepreneurs spend years amassing their wealth only to lose everything when a legal claim arises. Unfortunately, this is the risk of living, working, and doing business in such a litigious country.

A judgment is a court order resulting from the court deciding a lawsuit in which the creditor wins. In a legal battle with a debt collector, the judgment entitles the creditor to legally claim the amount owed must be paid. If the judgment amount is not paid in a timely manner, the creditor can take further action to collect the debt, including the seizure of assets.

ASSET PROTECTION PLACES A LEGAL BARRIER AROUND WEALTH TO MAKE IT HARDER TO REACH IN CASE OF A LAWSUIT.

Successful professionals commit hours of hard work to amass wealth but may not understand the importance of protecting what they have worked

so hard to obtain. Asset protection places a legal barrier around wealth, making it harder to reach in case of a lawsuit. The more difficult it is to reach assets, the more likely a plaintiff will be to abandon their lawsuit or settle the matter for a smaller sum.

The enemy of all wealth-builders is risk. The risk of legal threats multiplies as the amount of wealth increases. Many high-net-worth individuals have lost their fortunes to creditors, malpractice claims, lawsuits, or business disputes. Wealth can attract unwanted attention, and people can see success as a target. A lawsuit can threaten someone's entire net worth, but offshore trusts are a highly effective means to protect wealth and enjoy peace of mind throughout a lifetime.

Increased legal risk is an undeniable part of certain activities; however, liability does not necessarily need to arise from work or business. Is asset protection for everyone? Generally, yes, if you have assets. Anyone working to amass wealth would not be indifferent to being sued. The higher the amount of assets owned the greater the urgency to establish legal safeguards before anything goes wrong.

In this context, the importance of effective asset protection cannot be overstated. Asset protection can be the difference between spending months or years in court defending a claim or settling for a fraction of the cost once the plaintiff's attorneys realize they will have to deal with the extremely difficult task of attempting to break into an offshore trust. An offshore trust can better protect maintaining a lifestyle your family is accustomed to or potentially having to start back at square one after a lawsuit.

For the most sophisticated strategies such as offshore trusts, a net worth in the mid-six figures or above is suitable to justify the legal and compliance fees associated with these strategies. Other affluent individuals might still want to protect their wealth and can benefit from other less complex asset protection solutions, such as insurance policies, retirement accounts, or increasing home equity, depending on the state of residence.

I hope that after reading this book, savvy investors will have a much better picture of what legal defenses are available to help protect wealth from a potential lawsuit.

CHAPTER TWO

THE PLAYING FIELD

> All you need is the plan, the road map, and the courage to press on to your destination.
>
> **~ Earl Nightingale**

Asset Protection

Asset protection is all about cc around wealth. The intent here is to give a basic understanding of the tools available for protecting wealth.

Where We Are

The United States is, by many standards, one of the most litigious societies in the world. Class-action lawsuits are marketed like political campaigns and contingency-fee attorneys fight over frivolous lawsuits. The country's legal system has become a system in which claims are packaged up, sold, and remarketed similar to junk bonds in the 1980s.

If an attorney does not want to litigate a claim, they refer the claim to another eager lawyer who will litigate it for them whilst collecting a sizable referral fee. The U.S. is relatively unique in allowing referral fees and contingency fees. Law firms spend millions of dollars a year on advertising to extract money from unprepared defendants in frivolous lawsuits.

MOST WEALTH IS NOT CREATED BY LITIGATION.
LITIGATION IS ZERO-SUM
IT'S MESSY.

Lawyers may coach clients on how to embellish stories about their former employer so they can increase their legal fees. It's all about the fees. It's part of every lawyer joke and what keeps any highly compensated executive or successful entrepreneur awake at night. *Most wealth is not created from litigation*. Litigation is zero-sum. It's messy. Friends rarely walk away from litigation and continue to be friends.

In contrast, most wealth is created by building lasting relationships with clients, business associates, and customers. These are the people whom Blake Harris Law serves the entrepreneurs, the executives, the doctors, and, yes, even lawyers who add value to their customers' and colleagues' lives.

Litigators show up at the poker table with a gun saying, "Give me your chips or else." Those are the bad guys. The bad guys are the ones twisting the facts and circumstances in order to obtain a judgment against their financial targets. It is the bad guys who attempt to steal the wealth created through lifetime effort.

The mission of Blake Harris Law is to change the rules of this game and level the playing field. This is done using expertise in asset protection to develop the appropriate plan of action to keep wealth out of the bad guys' hands and rightfully where it belongs for generations to come.

CHAPTER THREE

ASSET PROTECTION - NOT JUST FOR THE WEALTHY

> A man who does not plan long ahead will find trouble right at his door.
>
> **~ Confucius**

While speaking at an international conference, Attorney Blake Harris was asked, “How high does my net worth need to be in order to benefit from asset protection?”

A common misconception in asset protection is that prospective candidates think their net worth is not high enough.

Asset protection is not just for the super-wealthy. People who do not consider themselves to be wealthy may not worry about protecting their assets, and this could be a huge mistake. Individuals at any asset level should consider what they can do to protect their assets against creditors and lawsuits.

Anyone can be the target of a lawsuit. Litigation can happen because of a car accident, an unhappy neighbor, a claim of medical malpractice, divorce, and many other reasons. Without the proper asset protections in place, a person who loses a lawsuit could be financially wiped out. With the proper asset protections in place, it may be possible to legally keep most, if not all, assets. Doing what is necessary to protect against unfortunate circumstances does not have to be difficult and should be discussed with an experienced asset protection attorney.

INDIVIDUALS AT ANY ASSET LEVEL SHOULD CONSIDER WHAT THEY CAN DO TO PROTECT THEIR ASSETS AGAINST CREDITORS AND LAWSUITS

Because anyone can become the target of a lawsuit, it is important to put together a plan designed to protect one's assets as soon as possible. This must be done prior to involvement with a lawsuit; once legal action is taken, it may

be difficult to keep creditors from obtaining a person's assets. It may not be possible to implement protective measures *during* a lawsuit.

When a person decides to create a plan to protect their assets, it is important they have a goal. An individual should analyze their financial status, as well as identify which assets need to be protected or transferred. An experienced attorney can help by advising a person how to change their financial situation for their own benefit.

There are many different elements associated with an effective asset protection plan and could involve different financial and legal vehicles including but not limited to utilizing state homestead protection laws, insurance policies, estate planning, as well as other business vehicles and asset protection trusts.

Below are examples of asset protection techniques that can provide asset protection benefits for just about anyone. This is meant to provide some broad-based strategies that you can incorporate into your asset protection strategy. Please note that this does not constitute what would be defined as a "sophisticated asset protection plan," which will be set forth in greater detail throughout the book.

Homestead Exemptions

Should a person lose a lawsuit and be forced to declare bankruptcy, a homestead exemption law prohibits a court from giving a portion of the equity of a homeowner's house to creditors thus protecting that home equity. Some states, such as Florida and Texas, have no limits as to the amount of equity that can be protected. In comparison, Colorado only protects approximately $75,000 of equity in your home.

Transferring Ownership

A creditor cannot take an asset a person does not own. It may benefit a person to consider transferring certain assets into an asset protection trust. This financial vehicle makes it possible to have family members receive income or give certain assets outright to specified family members.

Life Insurance and Annuities

A person could have significant asset protection with cash-value life insurance policies and

annuity balances. It is important to check with an attorney to learn each state's specific exemptions.

Retirement Accounts

All ERISA-qualified retirement plans provide some asset protection according to federal law, and It is possible to protect up to a million dollars in assets with a retirement account. Some states provide protection in excess of a million dollars worth of assets. Proper planning for asset protection should involve working with the right professionals. Doing this will provide protection for investments, wealth, real property, savings, and more that are accumulated over a lifetime. A plan will also include protecting future assets. An asset protection attorney can create a plan that will make it difficult, if not impossible, for a creditor to seize assets.

CHAPTER FOUR

ASSET PROTECTION - COMMON QUESTION

A dream doesn't become reality through magic; it takes sweat, determination, and hard work.

~ Colin Powell

What is Asset Protection?

The financial definition of an asset is any resource owned or controlled by a person or business, and legal liability can cause assets to be taken by creditors. Given the fast pace of change in the business world, mistakes can be made that potentially threaten one's long-term financial future.

The courts, insurance companies, and plaintiff attorneys are all busy with a countless number of claims, grievances, and legal threats of all types and this shows no sign of slowing down anytime soon.

The first consideration about asset protection is to recognize and study the sources of potential liability that could give rise to a claim. It can be difficult to anticipate how a legal claim could arise, and financial liability can stem from many different areas, including spousal separation, motor vehicle accidents, business transactions, employer/employee relationships, and real estate holdings such as rental properties.

BROADLY SPEAKING, THE KEY TO ASSET PROTECTION IS TO SEPARATE THE INDIVIDUAL OWNER FROM THE ASSETS THAT NEED TO BE PROTECTED.

The field of asset protection exists to provide legal options to protect assets from creditors and others. Effective asset protection means taking steps to protect wealth before a claim arises. Broadly speaking, the key to asset protection is to separate the individual owner from the assets that need to be protected.

For example, a limited liability company can be created to act as the owner of certain assets. In the case of commercial or residential real estate, if an accident or disagreement were to arise, the difference between whether the property is owned by an individual or by a dedicated legal entity is significant, determining whether a business will be the recipient of a lawsuit instead of the individual owner being sued.

Having a limited liability company "absorb" the lawsuit on behalf of the individual results in only the assets held by the company being at risk, instead of a person's entire net worth. If the liability exceeds the assets in the company, there should be no risk of having to provide additional capital to cover the lawsuit.

This is a straightforward example of asset protection, but hopefully an illustrative one. Effective asset protection strategies are different variations on this theme, with some increased complexity.

There are various structures to create separation between assets and limit the amount of liability. Instead of limited liability companies, asset protection strategies rely more on trusts to

separate the ownership of the assets from the individual.

Trusts can be associated more with estate planning, but they are also powerful asset protection solutions. Establishing a trust that provides asset protection benefits involves more complex legal drafting and planning compared to traditional trusts. Working with an experienced professional is a must.

An asset protection attorney should be familiar with the laws of various states and offshore jurisdictions to establish a legal risk prevention strategy. The key factors are where to hold assets and who should exercise control over them. Asset protection should make as many assets as unreachable as possible. Even if control over assets is transferred to someone else, the original owner largely retains the ability to use and control the assets.

While there are rarely any full assurances in the practice of law, proper planning can give people peace of mind that their assets will remain secure if ever threatened. When done effectively, asset protection limits the amount of assets judgment holders can get. It is important to remember asset protection steps must be done within the confines

of the law and are completely legal so long as they are done properly.

What does it mean to protect assets?

Protecting your assets means assets are preserved for both personal use and for future generations. Asset protection means any of a number of possible steps have been taken to either change the form of ownership of the assets or the location of ownership in order to make it difficult or impossible for creditors or judgment holders to reach the financial property. These are the various structures established to either create some separation between the individual and the individual's assets or to move them into entities, thus limiting the amount of liability. By forming limited liability companies, trusts, and other legal entities, the asset owners can separate themselves from the assets they own. If protecting assets is a priority, it's important to form a comprehensive strategy that takes into consideration particular situations, goals, and needs.

Of course, there is not a singular magic step to provide absolute protection over every owned asset. Instead, asset protection means working to devise a strategy of various measures to take to

give as much protection as possible to as many assets as possible. When done effectively, asset protection will greatly limit the number of assets a prospective judgment holder (one who successfully sued and received a judgment) can be granted. It is important to remember asset protection steps are done within the confines of the law and are completely legal so long as such steps are implemented while the threat of a lawsuit or other event is general in nature.

Protecting assets begins with an attorney who will scrutinize the laws of various states and jurisdictions in order to find a general strategy of where to hold assets and who should exercise control over them. Asset protection will make as many assets as possible unreachable. This means that even if control over assets is transferred to someone else, ownership doesn't change and the assets are protected.

What should be protected?

A lifetime of work will hopefully create a number of different assets and properties to keep safe from creditors using asset protection. In order to devise the strongest possible asset protection strategy, it is helpful to know ahead of time

exactly what it is to be protected. The right asset protection professional will assist in figuring out which of these assets are already protected by law and which assets will need action to be protected.

The good news is in most states, one of the most important assets of all, a home, is already protected from creditors due to homestead exemptions as briefly discussed earlier. Hopefully, there will be additional assets within a portfolio besides one's home. For example, other business investments including real estate do not fall under any other exemption, and alternatively, business assets need the highest degree of protection.

Since bank accounts are one of the first things that creditors will go after, it's necessary to find a way to move the money from a bank account into another legal instrument. Liquid assets are among the easiest things for creditors to attach, so go to great effort to find a way to protect them. While hard assets such as real estate are slightly more difficult, they are still not off limits for creditors. Find a way to structure the ownership of these hard assets to keep them where they belong, no matter what, even if some control over them must be sacrificed.

Consider the necessity of protecting retirement accounts or assets for that stage in life. Some steps have statutory protections for retirement assets, but when it comes to bankruptcy proceedings, there is a limit on the number of assets that are protected. Working with an asset protection attorney can help devise strategies to give the highest amount of protection to the most assets possible.

How does asset protection work?

The first step in the asset protection process is to find an attorney who has a specialization in the field across multiple legal disciplines since there is no single way to ensure asset protection. While there may be a temptation to personally take on the challenge in order to save money, this is an area where everything must be done right. If an asset protection strategy is based on false assumptions or if someone has made an error, previous assumptions of asset protection may be unfounded.

Asset protection may involve executing a range of legal documents that transfer decision-making power over some assets to a trustee. It may include taking actions to create various corporate

entities and transferring assets to these entities because of the protections they provide. Then, shift other financial assets into certain accounts that are protected from creditors. For example, some states may have absolute protections for retirement accounts, as well as other safeguards for other types of annuities that provide an income. The most important thing to remember is to put the plan in place immediately because any asset protection steps that are taken after a lawsuit is filed may be considered a fraudulent conveyance and then disallowed.

Can a trust protect assets from a lawsuit?

A trust is a legal instrument, so the answer to this question is "it depends."

When structured the right way and in the proper time frame a trust should provide asset protection from lawsuits and creditors. The important thing is the trust must be designed in such a way there is a separation between the owner and the assets. In most cases, this means surrendering some form of control over the asset to the trustee while maintaining beneficial ownership. Retaining the power to control your assets may allow the courts to find the trust

instrument to be a legal fiction based on the trustee. A successful trust depends on creating a degree of separation between the trust owner and the trust assets.

The most important aspect of a trust to provide legal protection of assets is that the trust is irrevocable. Irrevocable usually means it cannot be undone and generally cannot be modified. However, irrevocable does not necessarily mean inflexible, and in the case of an offshore trust, even though it will be irrevocable, it can be very flexible, allowing for contributions and distributions, broad investment opportunities, and even the ability to have the trust amended or dissolved.

EXACTLY HOW MUCH PROTECTION IS PROVIDED BY A TRUST DEPENDS ON THE LAW OF THE JURISDICTION WHERE IT HAS BEEN ESTABLISHED.

In essence, an offshore trust can be structured in a way that gives the client the benefits of a

revocable trust with the protection of an irrevocable trust.

When a trust is revocable, creditors can still reach it because the beneficiary of the trust ultimately has the power to undo the trust and take back the assets. Even as the beneficiary of the irrevocable trust, it is the surrender of control of the assets to the trustee that legally separates the beneficiary from your assets. Exactly how much protection is provided by a trust depends on the law of the jurisdiction where it has been established. Some attorneys advise establishing a trust in certain overseas jurisdictions since it is nearly impossible for creditors to reach the assets that are held internationally.

What is an offshore trust?

A trust is a fiduciary contract that grants a third party called a trustee, the ability to hold and manage assets on behalf of a beneficiary. Trusts can be created for several different purposes. A well-drafted trust document specifies how the assets should be managed by the trustee and how they should pass to the beneficiaries. Trusts can be established to provide legal protection from future lawsuits, to distribute assets according to

the wishes of the grantor, and to avoid or reduce inheritance or estate taxes.

While trusts are generally discussed in the context of estate or tax planning, they can be powerful asset protection tools. When structured correctly and in a timely fashion, a trust can provide asset protection against lawsuits and creditors. An asset protection trust is designed in such a way that it provides a degree of legal separation between the grantor and the assets. In most cases, this means the owner will transfer some degree of control over the assets to the trustee. If the owner maintains direct control of the trust assets, the courts can determine the trust structure is invalid.

Asset protection trusts are irrevocable. This, however, does not necessarily mean the trust cannot be undone or modified. Irrevocable means trust assets will be harder to reach by creditors since they would need the trustee to disperse any trust assets. Even if the grantor and beneficiary of the irrevocable trust are the same person, it is the transfer of control of the assets to the trustee that legally separates the owner from the assets. Exactly how much protection is provided by a trust depends on the law of the jurisdiction where it has been established. For this reason, a trust

established in an overseas jurisdiction can make it nearly impossible for creditors to reach trust assets.

Essentially, an offshore trust has the same features as a regular trust. However, it allows the legal transfer of assets to an overseas jurisdiction such as the Cook Islands. Once the assets are under the administration of a trustee outside the U.S., assets placed in an offshore asset protection trust will be extremely difficult to reach. Even if the plaintiff gets a favorable judgment in a U.S. court it will have little effect on the trust since the jurisdiction of a court in the U.S. doesn't reach the foreign trustee.

If a creditor is determined to go after the trust assets, they will need to sue the trust in a distant country with the assistance of an international lawyer. As a result, the legal costs will be much higher than a local claim. This is extremely difficult in countries with strong asset protection laws, so creditors would face an uphill challenge and a legal system that is unsympathetic to their interests to reach your offshore assets.

In fact, when set up properly, offshore trusts may be one of the safest options for protecting wealth, not just in the present but for generations to come.

Offshore trusts help shield fortunes from creditors, lawsuits, malpractice claims, court orders, and other types of liability and seizure. They could be the last line of defense between security and financial ruin. The trick with offshore asset protection is to start early. If assets have already been exposed to legal risk, it may be too late to protect them.

If the thought of transferring ownership of assets causes nervous concern, it's a typical reaction. Fortunately, a properly set up offshore trust has legal protections in place that help maintain control over assets and manage them as wanted. This includes:

- Appointing a reputable, reliable local trustee to carry out wishes.
- Structuring the terms of the trust to support the benefactor's vision and goals.
- Choosing a trust protector to step in if the trustee goes off track.

Depending on the country chosen to transfer assets, investments will be in a robust system put in place specifically to protect assets in this way. It's absolutely necessary to work with an

experienced professional in order to set up these terms exactly as wanted.

Offshore asset protection is not about breaking laws or avoiding taxes, though many countries offer attractive tax benefits for investing on their shores. However, taxes would still apply to your home country. Instead, offshore trusts are best for legally protecting wealth from risk or liability.

The greater the wealth, the higher the risk – not to mention liability insurance. Lawsuits, malpractice claims, alimony disputes, and seizures by creditors can all threaten assets.

ASSET PROTECTION IS IMPORTANT FOR HIGH-EARNING PROFESSIONALS LIKE LAWYERS, DOCTORS, PROPERTY DEVELOPERS, ACCOUNTANTS, ARCHITECTS, CONTRACTORS, BUSINESS OWNERS, AND ENTREPRENEURS.

When assets are legally tied to a name, creditors can "reach" those assets and use them to satisfy debts. When sued, a plaintiff can try to use those

assets to satisfy the judgment and may require a payout of cash or liquidation of tangible assets.

Asset protection is important for high-earning professionals like lawyers, doctors, property developers, accountants, architects, contractors, business owners, and entrepreneurs. And in recent years, social media influencers. Facing legal risks doesn't mean an entire fortune on the line. In many cases, setting up a business isn't enough to shield personal wealth from risk.

Owning and operating a business separate from personal identity doesn't eliminate the risk courts could still "pierce the corporate veil" to satisfy business debts with personal assets. That means even with a corporate structure in place, personal assets could be at legal risk. A single business venture could threaten all wealth.

Offshore trusts are specifically made for asset protection. Countries that specialize in offshore trusts have strong legal frameworks in place to protect the wealth of their offshore investors. That makes offshore trusts even more robust at shielding a fortune compared to limited partnerships, limited liability corporations (LLCs), domestic trusts, or other corporate entities.

Are offshore trusts legal?

Offshore trusts can get a negative reputation from the media from stories about leaks or hacks revealing the offshore trust holdings of the rich and famous or movies and television shows portraying hidden caches of money stored overseas. These exciting storylines tend to get peoples' attention but are not exactly the most realistic ones. The world of offshore trust structures and asset protection is, in fact, much more mundane.

It is true that offshore trusts can be used as a device for unlawful activity such as tax evasion and financial crimes, but they also have perfectly legitimate purposes that are fortunately much more prevalent. An offshore trust is a legal contract; what people use it for can be good or bad. In reality, professional trustees and banking institutions are required to comply with due diligence inquiries regarding their clients and the source of funds. Legitimate players in the offshore trust industry have the incentive to avoid fines by their respective regulators and maintain their reputation of legitimacy.

Asset protection is a complex subject that should be discussed with an asset protection attorney. An offshore trust provides asset protection because it acts as a separate legal entity and assets transferred to the trust are no longer held by the grantor. This might sound counterintuitive, but the best time to create an offshore trust is when things are calm.

Offshore asset protection trusts provide the best level of protection when they are established well in advance before a legal threat arises. Almost every country has a statute of limitations – usually two years – that allows creditors to challenge asset transfers as fraudulent. During this time, if a creditor can prove the assets were transferred to avoid liability in a specific case, that could compromise the asset protection measures put in place.

Generally, a year or two is enough time to demonstrate the offshore trust was not created in response to any lawsuit or with the intent to avoid paying any specific party. Creating an offshore trust shortly before a lawsuit is filed may still be possible, but it can create a negative presumption and draw more scrutiny from the courts. In addition, voidable transfer statutes can prevent

recent transfers to an offshore trust from being respected.

Are offshore trusts safe?

Offshore trusts can be extremely safe, especially when created with an experienced international asset protection attorney setting up the trust. Countries with strong offshore asset protection laws usually offer:

- Airtight privacy protections for trust grantors, beneficiaries, and assets.
- Regulatory policies and courts that favor foreign investor trusts.
- Advantageous tax policies and local tax exemptions.
- Protection from asset seizures ordered by foreign or U.S. courts.

When it comes to offshore asset protection, one size doesn't fit every situation. The greater the clarity of intent and detail in the deed of trust, the better the appointed trustee can follow the benefactor's wishes. Wealth protects the future and generational legacies – as such, this process deserves an approach personalized to goals, not a

cookie-cutter plan made with just anyone in mind.

When consulting with a lawyer to navigate the complex world of offshore asset protection, they'll help cover all bases, communicate intentions, implement the most effective strategies, and avoid common pitfalls. A knowledgeable attorney can provide guidance to a country with an advantageous legal system and a reputable local trustee. They can help write a deed of trust in a way that assures a secure future.

How can asset protection deter litigation?

When people are deciding whether to file a lawsuit, one of the main determining factors is the chances of a financial payout if they are successful. Winning a judgment and collecting on a judgment are two entirely different things. A plaintiff can prevail in a lawsuit and wait years to see only a fraction of the judgment amount if they see anything at all. This scenario makes people think twice about pursuing a case. Going through a trial is a difficult thing people will not want to endure if they do not end up with any compensation. Thus, the more assets are

protected, the greater the ability to forestall the possibility of being sued.

To fully understand why a plaintiff may be hesitant to file a lawsuit against someone with sound asset protection, it is important to know what happens after a lawsuit is concluded. Once a trial is concluded and there is a judgment, this is the start of the next process. The successful plaintiff must locate the defendant's assets. This is not always easy to do. It is much more difficult when assets are not domiciled in the United States since foreign jurisdictions provide an extreme amount of privacy when assets are moved there.

Even with a favorable court ruling, a successful plaintiff cannot collect what they cannot locate. If the judgment holder knows about the assets, they can only collect assets in the name of or controlled by the defendant. While plaintiffs may not know the exact nature of the assets held and where the property is kept, they should have a sense ahead of time as to the general contours of asset structure. Before embarking on the process of litigation, plaintiffs have to do their due diligence to know more about whom they are suing. They may search publicly available

databases to figure out what assets are owned and potentially available for collection.

Many litigation attorneys take cases on a contingency basis, meaning they are only paid out of the money collected from the defendant. If their client does not get paid, they do not get paid either. Thus, lawyers make the calculation of what their potential payoff is before they take the case. If the lawyer does not think that there will be a payout or even a payment in it for them, they will naturally be reluctant to take on the case.

While some plaintiffs may file a case on principle and view a judgment as vindication and validation, most other plaintiffs go through court expecting to be compensated for whatever harm they claim to have suffered. History is replete with examples of large judgments against defendants that have gone uncollected. For example, the O.J. Simpson murder case was one of the most famous jury cases of all time. After Simpson was acquitted of the murder charges, the families of the deceased brought a civil case against Simpson and obtained a $33 million judgment. Twenty years after the civil case, an overwhelming amount of the verdict has gone uncollected. Certainly, Simpson was not destitute,

but the plaintiffs had not found the assets to collect.

Contemplate what the experience is like for a plaintiff searching for assets. A check of the public records database comes up empty and does not reveal much of anything by way of property. They may learn of a home; however, the laws of the state may have a homestead exemption, meaning that the plaintiff might be prevented from seizing a primary residence, even if they have gained a large judgment. If they learn of an established trust, they may see that it is either in a state that allows domestic asset protection trusts or it is established in a foreign jurisdiction.

For many plaintiffs, when they see a trust is domiciled in Nevis or the Cook Islands, they realize there is little chance to collect those assets. Even if the plaintiff can somehow persuade the judge to order the defendant to request the trustee repatriate the assets under the threat of contempt, the foreign trustee will still safeguard the assets. At some point, the plaintiff may realize their chances of collecting are very slim and may be more likely to settle.

The most important point to remember is that this planning is best if done before there is any type of

threatening litigation is filed. Establish asset protection strategies when there is the prospect of litigation as opposed to actual litigation.

How is an asset protection plan set up?

Protecting assets isn't exclusive to safeguarding a business from personal suits or vice versa. Asset protection can also ensure that everything worked for will pass on to heirs or will be protected in case of divorce.

It's important to start an asset protection plan before there are creditors knocking at the door. For example, fraudulent conveyance laws exist to protect the rights of current and future creditors. Don't start making changes to assets and employing asset protection strategies when there's a current creditor or lawsuit that's been filed.

Working with an attorney who understands both federal and state laws for asset protection can ensure protections are completed properly and assets are divided in such a way as to allow both the protection and degree of control needed.

What are the components of an asset protection plan?

Most asset protection plans build different layers of protection and incorporate different strategies, including:

- Risk management through smart insurance policies.
- Estate planning.
- Advance transfer strategies.
- Protecting assets in case of divorce.

Insurance may provide enough coverage to settle any personal and business lawsuits. Umbrella policies and other types of insurance can help bridge the gap in coverage, supplementing business insurance and personal liability policies. However, relying on insurance alone is risky as not all claims will be covered and other claims may go beyond policy limits.

CHAPTER FIVE

ASSET PROTECTION STRATEGIES

> It's not how much money you make, but how much money you keep, how hard it works for you, and how many generations you keep it for.
>
> **~ Robert Kiyosaki**

Asset protection can be done successfully using a number of different strategies. There is no one overarching way to protect assets. Instead, it will likely mean many different steps have been completed as part of an overall strategy. The first step towards asset protection will generally involve purchasing insurance that can provide a relatively wide degree of protection.

However, the mistake that many people make is to stop after simply purchasing a policy. Insurance does not always protect to the extent needed and when required. As a result, other strategies are needed. There are several different moves that could be considered forms of asset protection that are described below.

One option is to create a limited liability corporation (LLC) for a business or to hold property.

Then, liability extends only to the LLC's property and the LLC owners are not responsible for anything else beyond that.

Some people create LLCs specifically to own property. Others create a structure of multiple LLCs to further minimize risk.

INSURANCE DOES NOT ALWAYS PROTECT TO THE EXTENT NEEDED AND WHEN REQUIRED. AS A RESULT, OTHER STRATEGIES ARE NEEDED.

Another asset protection strategy is to create a trust. Property is granted to the trust, and it is under the control of the trustee. Trusts can be either onshore or offshore. There is a greater degree of protection for offshore trusts, but they are more expensive to establish. The trust essentially becomes an identity separate from the

grantor since it is a new structure with control separate and distinct from the person who has beneficial ownership of the assets.

Additionally, some of the assets can be moved into accounts that enjoy statutory protections from creditors. For example, retirement accounts are protected from judgment creditors in some states (but not necessarily from bankruptcy court above a certain amount). Further, some annuities and life insurance policies are protected, provided they are for the benefit of the person who is seeking to shield their property. Property can be transferred to a spouse's name or hold the property jointly with a spouse. In some states, joint tenancy in the property is enough to shield it from creditors.

Single Member LLCs

Limited Liability Companies (LLCs) are a type of legal business formation that is a popular and straightforward way to protect assets. An LLC provides peace of mind for members because they know the debts or actions of another member of the LLC will not force the business into insolvency or uncomfortable positions. When property is placed under an LLC, it can reduce

the owner's personal exposure to risks surrounding that property, known as *inside liability*. When real estate is placed in an LLC, the property is treated as an autonomous business. It is considered a standalone business and is legally separate from its owner's other assets. If someone gets hurt on the property and sues, only the property that is under the LLC can be attached to pay a judgment, not the owner's personal property.

An LLC offers protection for personal assets and can help members protect themselves against the consequences of poor judgment or debt from other members of the LLC but operating a business as a corporation has its own unique set of protections, too. Many LLC owners keep just enough assets in the LLC to ensure that it's fiscally sound and able to cover its debts. Therefore, some creditors will file a suit against the LLC in hopes of penetrating its protections and gaining access to the owner or owners' personal or other assets.

If there is more than one investment property, ideally separate LLCs should hold each one so that a lawsuit related to one property can't potentially impact another.

Consider three properties (A, B, and C) and all are under a single LLC. If a trespasser was on property A when he tripped and fell, all three properties will be at risk to satisfy a judgment. But if each property is in its own LLC, only property A will have liability exposure. However, the benefit of having the properties in separate LLCs should be weighed against the extra administrative burden of maintaining multiple LLCs and in some cases, having one LLC own multiple properties may be appropriate.

Many people also like to hold properties in an LLC for privacy reasons – they don't want everyone to know what they have. Though filing requirements do vary by state, most states require the names of the members or managers of the LLC be listed on the public filing. There are a few states that allow filing for an LLC without giving the names of members or managers.

The LLC represents an excellent way to shield from *inside liability*, but what if there is a judgment related to other business or professional activities, known as an *outside liability*? Will the LLC protect properties from that? The answer is it depends on the law of the state where the claim is filed. In many states, a creditor cannot force the

turning over of membership interest in an LLC. Instead, those creditor's rights are limited to a *charging order*.

The LLC is a barrier between the business assets and personal or familial ones. It also protects a business from having an unwanted individual as part of business operations.

Family Limited Partnerships

A family limited partnership (FLP) is a holding company owned by two or more family members created to protect a family's business interests, real estate, and other low-risk assets.

One of the main benefits of using an FLP to hold real estate investments or other low-risk assets is the FLP can be used to give Charging Order Protection over assets. This means if a member of a FLP finds himself or herself in debt, the creditor cannot get access to the property inside the FLP or even to the debtor's share of the FLP in order to satisfy the debt. Charging orders do allow a creditor to take the debtor's share of any distributions from the FLP when those distributions are made.

While this may sound favorable to creditors, it actually is not. If found in the debtor situation, a charging order gives the defendant in the suit the ability to delay paying creditors indefinitely by withholding distributions while paying a salary to manage the FLP.

All states allow personal creditors of an FLP owner to get a charging order against the debtor-owner's FLP interest and in about two-thirds of states, the charging order is the creditor's only option. Also, because the creditor is not allowed to order the FLP to make a distribution, creditors who obtain charging orders frequently end up with nothing.

Another way that charging order protection can benefit the owners is if that trespasser who sued is successful and receives a charging order, it is likely that he will still be liable to pay taxes on the amount never actually paid to him (as long as the FLP never makes a distribution).

Letting that plaintiff's lawyer know up front the existence of a well-drafted FLP is a great way to deter that person from suing in the first place. As many lawsuits are taken on a contingency basis, and an asset search will be one of the first things the attorney does before accepting a case, placing

assets into an FLP reduces the financial incentive for the plaintiff's lawyers.

The original purpose of a charging order is not to protect the debtor's interest in the FLP: it was so other members of the FLP would not have their interest endangered when one member found themselves in hot water.

This is different from a single-member LLC because there have been court opinions that have said if there are no other members in an LLC to protect, then the charging order protection should not exist.

As of right now, only five states provide charging order protection to single-member LLCs:

- Alaska
- Delaware
- Nevada
- South Dakota
- Wyoming

The remaining 45 states only provide charging order protection to multi-member LLCs and FLPs.

Asset Protection Trusts

An asset protection trust can describe any of a number of different vehicles that can shield assets from lawsuits or other creditors.

This is a trust that fully transfers control of assets to a trustee while the asset owner remains the beneficiary.

The main two types of asset protection trusts are domestic and foreign asset protection trusts.

AN IRREVOCABLE TRUST IS A TYPE OF TRUST IN WHICH TERMS TYPICALLY CANNOT BE MODIFIED, AMENDED, OR TERMINATED WITHOUT THE APPROVAL OF THE NAMED BENEFICIARY OR BENEFICIARIES.

Trusts are similar to corporations and LLCs in that they are considered separate legal entities. The trust must be irrevocable in order to be a separate legal entity. An irrevocable trust is a type of trust in which terms typically cannot be modified, amended, or terminated without the

approval of the named beneficiary or beneficiaries. Once the grantor transfers ownership of assets into the trust, he or she is no longer considered the legal owner of the assets inside the trust.

As with an LLC or FLP, creditors can still attempt to get access to income from the trust, including most distributions.

In an asset protection trust, typically, the asset owner becomes the beneficiary of the trust while someone else serves as the trustee. The trustee will hold the legal title, but the beneficiary will hold an equitable interest.

This means that while the property held in trust is technically the beneficiary's, said beneficiary can't lose assets due to a lawsuit. Usually what makes an asset protection trust different from another kind of trust is that it is a *self-settled spendthrift* trust. This means that the beneficiary is both the settlor (the person who creates the trust) and the beneficiary (the person who gets to benefit from the trust) but may or may not be the trustee (the person who controls the trust) though maintaining a certain amount of control over how the trust assets are used.

The spendthrift clause is a key provision of asset protection trusts. This means the trust is created for the benefit of someone who is not able to lose their assets to a judgment creditor or in a bankruptcy proceeding. By using the same language that was originally drafted to protect these so-called spendthrift beneficiaries with an asset protection trust, it's possible to protect assets from lawsuits. This is because the assets are under the control of the trustee rather than the settlor of the trust personally. This works because the trustee, rather than the settlor, is in charge.

If a judge orders the settlor of the trust to turn over his assets to satisfy a judgment, the settlor can honestly state that it is the trustee, not himself, who has the authority to do so. Likewise, the trustee can state that he is legally obligated to follow the terms of the trust and maintain the assets until the lawsuit is resolved.

There are foreign asset protection trusts that are legal and effective as assets would simply move to a trust domiciled offshore. There are numerous foreign jurisdictions that have laws conducive to asset protection trusts and are very aggressive in protecting assets.

Domestic Asset Protection Trusts

A domestic asset protection trust (DAPT) is a legal structure that allows the protection of assets from legal threats. In essence, a DAPT is an irrevocable trust in which the beneficiary can be the same person who created the trust, and the trust's assets are shielded from that individual's creditors. Domestic asset protection trusts exist within the U.S. legal system, offering less privacy and less effective protection than foreign asset protection trusts.

It's crucial to check local state laws to determine whether the applicable state recognizes domestic asset protection trusts.

The Domestic Asset Protection Trust is currently recognized in eighteen states: Alaska, Delaware, Hawaii, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming. Over the years, Nevada, South Dakota, and Wyoming have emerged as the best jurisdictions in the United States due to their favorable state laws regarding trusts.

Due to the simplicity and flexibility of a DAPT, it has become an increasingly popular option for asset protection.

While business owners have traditionally been able to protect themselves by using limited liability companies or corporate entities, a DAPT allows individuals to protect their personal assets as well as any business or investment assets. This type of trust can help level the playing field when it comes to personal exposure to creditors and lawsuits.

It is not just traditional creditors that a DAPT can protect against. DAPTs also provide protection from legal complaints, malpractice claims, and a host of other financially consequential events.

A DAPT can shield against the implications of lawsuits.

Not only will this help protect financial health if legal action is brought, but it can also help deter lawsuits from being filed in the first place. A creditor might be less likely to seek money if they know legal protections are in place.

While domestic asset protection trusts can be effective, they are at risk of being sued under the laws of another state with a different outlook

towards asset protection trusts, not to mention exposure to potential federal rulings.

As such, while an offshore trust can come with higher fees and reporting requirements than a domestic asset protection trust, no domestic trust can match the level of protection offered by an offshore jurisdiction.

Some of the disadvantages to a Domestic Asset Protection Trust are:

- Limited Regional Protection – One of the significant limitations of a Domestic Asset Protection Trust is its lack of recognition in many states. As of 2023, there are only eighteen states that currently recognize this form of trust. If you live or get sued in a state that does not offer explicit protections to DAPTs, there is a risk the courts may not be sympathetic to the protections of an out-of-state DAPT.
- Legal Grey Zone on Trusts Across State Borders – If you live in a state that does not explicitly allow the protections of a Domestic Asset Protection Trust, you may consider forming a trust in another

state to take advantage of the available financial protections. While this strategy has become a popular choice with many Americans, recent case law suggests this type of arrangement can be susceptible to unfavorable court rulings. As there is minimal case law to follow regarding out-of-state residents using DAPTs, there may not be protection from creditors if a DAPT trust holder resides in a state that does not allow DAPTs and forms one in another state.

- Fully Funded for Longer than Ten Years – 11 U.S.C. section 548(e) basically says that the trust needs to be fully funded more than ten years prior to any legal claim. Having a trust fund for a long period of time shows the courts the debtor of a lawsuit is not intending to hinder, delay or defraud any entity to which the debtor owes money versus if the debtor transferred funds to a Domestic Asset Protection Trust right before a legal claim, this could be thought of hindering, delaying or defrauding the claim.

- Exposure to Federal Rulings – Lastly, it's important to note the small amount of case law surrounding Domestic Asset Protection Trusts means there is little evidence this type of trust will hold up against federal judgments. As DAPTs are not recognized in many parts of the country, they may leave a trust owner exposed to federal rulings.

Offshore Asset Protection Trusts

Offshore trusts are a legal and powerful way to protect assets from lawsuits or creditors. Essentially, an offshore trust has many of the same features as a domestic trust. However, it allows for the transfer of assets to a different jurisdiction located internationally. If a person decides they want to sue, the costs of their lawsuit will be very expensive and probably unsuccessful as it will need to be handled with the assistance of an international lawyer. Establishing an offshore trust — particularly for those who have a high net worth or work in a field that encounters lots of lawsuits — can give an individual peace of mind that their assets are secure.

A trust is established under the laws of a foreign country and managed by a professional trustee not subject to the jurisdiction of the settlor's home country. Offshore Asset Protection Trusts are very secure. In the event of a lawsuit, assets placed in an offshore trust are extremely difficult to reach, even if the plaintiff gets a favorable judgment in a U.S. court. Often, due to the complexities of foreign legal systems, lawsuits aimed at attaining assets held by an offshore trust could go on for years, be dropped, or be settled.

A benefit offered by offshore trusts is the opportunity to select a preferred jurisdiction well beyond the options found within national borders. While domestically we have the option to select between U.S. states, going offshore opens a much wider diversity of jurisdictions and legal systems. Just like asset protection trusts established domestically, an offshore asset protection trust must be irrevocable, have an independent trustee located in the state or country where the trust is established, the trustee must have discretion for any distributions and a spendthrift clause must be drafted into the trust deed.

Offshore asset protection trusts are still vulnerable to legal threats, but they pose

considerable hurdles to anyone attempting to reach trust assets. The most obvious advantage of an offshore trust is unlike a trust located in the United States, anyone trying to sue the trust will have to litigate the matter in a foreign court. Under international law, a sovereign nation's laws must be accepted by other foreign governments. Additionally, since jurisdictions such as Nevis and the Cook Islands also do not recognize foreign judgments, winning a lawsuit in a U.S. court against an offshore trust will be a futile effort. Offshore jurisdictions are simply outside and beyond the reach of U.S. laws. Naturally, the added effort and expenses associated with bringing a lawsuit in a foreign jurisdiction is a significant deterrent to all but the most motivated plaintiffs. Not only will a plaintiff have to find and retain local attorneys but must also litigate in a different legal regime.

An offshore asset protection trust can provide peace of mind to people like physicians, business managers, and entrepreneurs whose wealth makes them vulnerable to legal threats. In the United States, the cost of defending a lawsuit can quickly reach hundreds of thousands or millions of dollars. In the event of a lawsuit, assets placed in an offshore asset protection trust are extremely

difficult to reach, even if the plaintiff gets a favorable judgment in a U.S. court.

On the other hand, offshore asset protection trusts are not a device to reduce or avoid taxation in one's home country. Citizens and residents of the United States should be aware of the increased reporting requirements imposed by the Internal Revenue Service (IRS) on foreign-held bank accounts. While this may not necessarily translate into a higher tax bill at the end of the year, it does represent a regulatory burden on offshore accounts and potentially onerous penalties for noncompliance. Offshore trusts must be carefully established and managed to avoid problems with the IRS. It is advisable to work with a CPA experienced with foreign trust reporting and taxation.

Benefits of Offshore Asset Protection Trusts

Highest Level of Protection

Offshore asset protection trusts are a practical and effective strategy to protect assets. An offshore asset protection trust is an effective tool for protecting assets from future lawsuits and potential creditors. A trust is established under the

laws of a foreign country and managed by a professional trustee not subject to the jurisdiction of the settlor's home country.

An offshore asset protection trust can provide peace of mind to people whose wealth makes them vulnerable to legal threats, like physicians, business owners, and entrepreneurs.

An offshore asset protection trust can protect a variety of different assets such as business inventory and equipment, cash, cryptocurrency, intellectual property (IP), real estate, recreational assets (e.g., private jets, cars, yachts), and securities. And various other tangible and liquid assets.

Control Is Outside U.S. Jurisdiction

A key element of an offshore asset protection trust is ensuring that the trust management has no ties or business presence in the U.S. In order to escape the reach of the U.S. court system, an individual can set up a trust and limited liability company established under the laws of a foreign jurisdiction. The trustee, trust protector, as well as the bank holding the deposits should be domiciled outside the United States.

Generally, an offshore asset protection plan combines an offshore trust as well as an offshore bank account. In some cases, an offshore limited liability entity will be included as well.

Fortunately, there are many foreign fiduciary companies all over the world that operate with the same degree of integrity and professionalism as their U.S. counterparts. While not regulated by U.S. government bodies, offshore trustee companies are registered and regulated by the national governments under which they operate. Many offshore fiduciaries have been operating for decades and have served as trustees for thousands of high-net-worth clients around the world.

One of the most important things to consider when setting up an offshore trust is using the most favorable jurisdiction. A good jurisdiction means being able to take advantage of a favorable legal system with strong asset protection laws, while ideally paying no income taxes to the offshore jurisdiction.

Some of the most sought-after offshore jurisdictions are the Cook Islands, Nevis, and Belize.

In order to reach assets protected by an offshore trust, if a lawsuit is filed against a settlor, the plaintiff would have to file the lawsuit in the jurisdiction where the trust is managed. Litigating a case in the Cook Islands or St. Kitts and Nevis can be very different from filing suit in a U.S. court. The plaintiff would need to hire foreign counsel, pay a bond with the court, as well as face a legal system that is generally not sympathetic to plaintiffs.

A Choice of Jurisdiction

An offshore asset protection trust can help defend assets by placing them beyond the reach of national courts and government agencies. As with any offshore enterprise, it is important to review the specifics regarding the foreign legal environment, the political stability of the offshore location, and the financial strength of its banks and trust companies. The most established offshore jurisdictions have long-standing reputations as safe places to do business in and invest assets.

One of the main benefits of going offshore is the ability to select the most favorable jurisdiction that will fit established goals and needs. However, with many different jurisdictions to select from,

all with separate governments, legislation, and compliance requirements, deciding on what offshore jurisdiction makes the most sense is far from obvious. The following information is intended to explore the most favorable alternatives available for United States persons when considering an offshore asset protection trust, including the Bahamas, Belize, the Cayman Islands, and the Cook Islands.

When choosing a location to protect assets, pick one that has a strong reputation, a stable government, and low taxation on trust assets. Since those who establish these types of trusts often have high-value assets, it's worth paying extra for a jurisdiction that will comfortably protect property.

To begin, research common offshore trust jurisdictions to find which one is right. The final decision may come down to personal preference and the most comfortable features thereof, but generally, a suitable jurisdiction will have the following qualities:

- Common-law system: Offshore trusts—and trusts in general—are based on English common law. For simplicity and

clarity's sake, the best offshore trust jurisdiction will usually be one of the foreign jurisdictions with a legal system based on English common law.

- Favorable tax laws: Jurisdictions that include inheritance tax and income tax in offshore asset protection trusts may not provide the needed benefits as income taxation will add to an overall tax burden. It's best to choose a foreign country that doesn't have income or estate taxes to protect the trust's assets.
- Favorable litigation laws: Another critical aspect of asset protection includes choosing an offshore jurisdiction that will provide benefit in the event of legal liability. Many offshore jurisdictions go to great lengths to protect defendants, sometimes requiring creditors to put forth bonds of up to $100,000 before they can bring their lawsuits in local courts.
- Stable economy: One of the many benefits of offshore trust formation is having a backup plan in case the economy goes south at home. Using a foreign bank account works to ensure a

financial future and security. Ideal offshore trust jurisdictions will have a stable economy should the domestic economy suffer significant losses.

Best Offshore Jurisdictions for Asset Protection Trusts

Offshore trusts have features not found in their domestic counterparts, so it is important to review the specifics regarding the foreign legal environment, the political stability of the offshore location, and the financial strength of its banks and trust companies.

One of the main benefits of going offshore is the ability to select the most favorable jurisdiction to fit goals and needs. The jurisdictions in which these trusts are frequently established have reputations as safe places to do business and invest assets.

However, with many different jurisdictions to select from, all with separate governments, legislation, and compliance requirements, deciding on what offshore jurisdiction makes the most sense is far from obvious.

Since trusts were originated and developed within the English common law system, it is generally countries with these shared legal traditions that are most competitive in the space. It is important to consider each jurisdiction's legal system, existing legislation, track record, and tradition for recognizing and enforcing trusts.

Another important factor is the business environment especially as it relates to offshore trusts.

Finally, it is essential to consider the tax obligations imposed by each jurisdiction. Particularly for individuals located in the United States, the jurisdictions discussed in this section represent those generally considered the best opportunities in the offshore world due to their established legal records, history of recognizing and enforcing trusts, and permissive tax environments.

Selecting what offshore options work best is a multifaceted process that will depend on individual circumstances, priorities, and needs.

It is also possible to draft an asset protection trust with special provisions (often referred to as flee clauses) that can give the current trustee or a trust

protector discretionary power to change the situs of the trust.

This means an existing trust might be able to change its home jurisdiction by assigning new trustees, moving assets to another jurisdiction, and/or amending the trust to comply with the laws of a new jurisdiction.

If the highest level of asset protection is the main priority, the Cook Islands might merit higher consideration.

Someone wishing to safeguard assets in the shortest time without having to worry about voidable transfers might want to consider a place like Belize, while Nevis might be a better option for those looking to obtain the benefits of offshore asset protection in a budget-conscious manner.

In these times of rising uncertainty, it is wise to take steps to help protect your assets and wealth.

When discussing offshore trusts, the number of options and possibilities are numerous. Places like Bermuda, the British Virgin Islands, Cyprus, Gibraltar, Guernsey, Hong Kong, Malta, Singapore, the Isle of Man, and even the United Kingdom are considered attractive offshore jurisdictions.

These places tend to have stable governments, well-established financial systems, legislative and judicial traditions regarding trusts, as well as low taxes, at least for those not domiciled within their borders.

PLACES LIKE BERMUDA, THE BRITISH VIRGIN ISLANDS, CYPRUS, GIBRALTAR, GUERNSEY, HONG KONG, MALTA, SINGAPORE, THE ISLE OF MAN, AND EVEN THE UNITED KINGDOM ARE CONSIDERED ATTRACTIVE OFFSHORE JURISDICTIONS.

Many of these jurisdictions are more attractive to citizens of other nations due to the potential tax savings in their home countries. Since the United States taxes its citizens and residents on their worldwide income, any potential tax advantages are diminished. Thus, while there are situations where these options make sense, they are generally not on the top of the list for U.S. persons looking for the best foreign asset protection alternatives.

These offshore jurisdictions will generally not require settlors to pay any "entry taxes" for

transferring assets offshore. In fact, their permissive tax regimes are a large part of what makes them so attractive for offshore trusts.

As discussed above, many of these jurisdictions are well known for imposing very few, if any, taxes on offshore entities.

In many cases, no income taxes, gift, or estate taxes are levied by the local governments, although some jurisdictions such as the Bahamas charge a small revenue stamp for new trusts established there. Normally any such government fees are minimal, and no local tax attorneys are needed.

Belize

Belize is another popular jurisdiction that offers high-quality offshore services including asset protection trusts.

The nation of Belize, a Caribbean country in the north of Central America, is generally regarded as one of the best offshore jurisdictions for trusts. Compared to many other offshore jurisdictions, Belize boasts a larger gross national product and population than other places on this list, which means it has a lower jurisdictional risk.

Belize is a former British colony that became an independent country in 1981. As such, the nation's legal system is modeled on the common law of England, including its laws on trusts. The Belize International Trust Law is based on that of the island of Guernsey, a British Crown Dependency located in the English Channel. Further amendments to its laws have made Belize a more competitive jurisdiction for international trusts.

Belize enjoys very flexible trust legislation, a streamlined trust formation process, and aggressive asset protection laws.

A Belize offshore trust is generally safe from foreign civil judgments, including creditor claims, bankruptcy proceedings, and divorces. Belize has no foreign exchange controls, and its tax laws impose no gift, estate, or income taxes on Belize offshore trusts.

Belize Asset Protection Trust

A Belize Trust is an offshore asset protection trust established under the laws of Belize and administered by a trustee within the country. An asset protection trust aims to separate the

ownership of certain assets with the rights to control, use, and enjoy such assets.

To qualify under the Belize Trusts Act, the settlor, beneficiaries, and trust assets must all be located outside of Belize, and the purpose of the trust is to be implemented outside of Belize's borders. The trust is established under Belize's laws and a local fiduciary must serve as trustee.

One of the major advantages of a Belize offshore trust is it offers immediate asset protection upon the formation of a trust. Normally it takes two or more years from the date the assets were transferred to the trust to be safe from fraudulent transaction claims.

Belize has decided to exclude the application of its narrow fraudulent transfer statute to trusts established in Belize. As long as the trust was lawfully created, the courts in Belize will not consider any claims of fraudulent conveyance.

The trust itself is a contract between the person who establishes the trust, known as the settlor, the manager or trustee, and the beneficiaries who are expected to receive the trust assets. The trust laws in Belize provide a high degree of protection, privacy, and flexibility.

In addition to its favorable trust legislation, Belize has a streamlined trust formation process and has low fees and taxes imposed on foreign trusts.

Belize's laws provide a very high degree of asset protection to its offshore trusts. Trust assets are generally safe against foreign civil judgments, including creditor claims, bankruptcy proceedings, and divorces. Compared to many other offshore jurisdictions, Belize has a larger population and economy, which provides higher political stability and lower jurisdictional risk.

As such, there is no minimum period of time in which proceedings against fraudulent conveyance can be brought against the settlor. This makes Belize a smart choice for anyone looking to get their asset protection plan running as soon as possible.

In addition to protection against fraudulent transfer claims, Belize trusts are also immune against Mareva injunctions. Mareva injunctions take their name from a 1975 case from the U.K., and they essentially petition the court to freeze trust assets until the court issues its determination on the case. The Supreme Court in Belize has ruled that the asset protection trust statutes in the

country supersede a petition for a Mareva injunction.

That means trust funds could potentially be used to pay for a legal defense without the risk of being made unavailable in the middle of litigation.

Keep in mind the settlor, beneficiaries, and trust assets must all be located beyond the borders of Belize, and the purpose of the trust is to be implemented outside of the country as well.

For U.S. clients, this is generally not a concern since very few have any assets located in Belize proper or plan to move their funds there. It is much more common to establish a bank account in Switzerland or other established banking centers.

Some main advantages of the Belize Trust are:

- Asset protection provisions are very strong.
- Settlors may create protective trust in their own favor.
- Flexible appointment and removal provisions of a trustee, possibility to appoint a sole trustee.

- Simplified legal provisions regarding the Trust Deed.
- Trusts are tailored to individual, specific requirements.
- Recognized in all common law jurisdictions.
- Recognition of other types of trusts such as Islamic Waqf and the Chinese Family Settlement.
- Recognition in many civil law jurisdictions.
- An important tool in international income, capital gains, and estate tax planning.

The government of Belize has no foreign exchange controls, and its tax laws impose no gift, estate, or income taxes on Belize offshore trusts. There is a license fee of $1,250 to maintain the trust registration and a flat annual tax of $850 imposed on international trusts that needs to be paid in Belize.

While the costs imposed by Belize are very competitive when compared to other offshore trust jurisdictions, citizens and/or residents of the United States should also be aware of increased reporting requirements imposed by the IRS

regarding offshore assets and bank accounts. An experienced tax attorney or accountant can help you better understand how to fulfill the IRS requirements.

Establishing a Trust in Belize

To establish a Belize Offshore Trust, first, select a trustee in Belize who will act as legal administrator of the trust and hold title to any trust assets. Generally, a respected professional fiduciary company will fill this role. Thanks to Blake Harris Law contacts in the offshore asset protection world, contact with fiduciary companies is facilitated allowing potential settlors to learn more about their services. In addition, if the decision is made to appoint a trust protector, a trust protector has the authority to supervise trust operations and remove or change a trustee if needed.

At that point, the actual trust document itself will be needed. The provisions of the trust detail the safeguarding, management, investment decisions, and distribution of trust assets. This is the contract that binds the settlor and the trustee who will be responsible for managing the trust in accordance with the terms of the trust.

By working with an experienced offshore asset protection law firm, your attorney can review the situation to make sure the trust document matches current needs and wishes. At any rate, read the trust document carefully and ask any questions before signing. While it is possible to change or amend a trust document after signing, it is much more efficient and cost-effective to have the document finalized at the outset.

In 2007, Belize created the International Trusts Registry and it requires all international trusts to be registered with this government body. In order to protect the confidentiality of the information contained, the registry does not need to receive a complete copy of the trust document, but it does require all trusts to be in writing. Finally, the initial registration fee needs to be paid and the government will issue a numbered certificate of registration for the Belize Trust.

The Cook Islands

There are only a handful of jurisdictions around the world with laws drafted to support the highest levels of offshore trust protection. The Cook Islands are widely recognized by legal experts as the nation with the most favorable asset

protection laws and the most tested case law history.

The Cook Islands is a self-governing island state located in the middle of the South Pacific Ocean. The Cook Islands was a forerunner in the use of offshore asset protection trusts, having developed its statutes recognizing and regulating offshore trusts during the 1980s and 1990s. Today, the Cook Islands are generally recognized as the safest jurisdiction for offshore asset protection and are home to reputable and experienced professional trustee companies.

One of the main reasons drawing people to the Cook Islands is its "defendant friendly" legal and judicial system as well as the high costs and other impediments for plaintiffs. Since the laws of the Cook Islands specifically exclude foreign judgments, anyone bringing a claim against a Cook Islands trust must do so in the country's courts and with local attorneys. In addition to the challenge of bringing a claim in such a remote location, the plaintiff must also cover the judicial costs associated with their legal action.

While the Cook Islands has a one-year statute of limitations on fraudulent transfers (two years from the cause of action), the plaintiff would need

to prove beyond a reasonable doubt that the trust was established with the intent to defraud him or her specifically.

This is a much higher threshold than other jurisdictions as the burden of proof in civil matters is usually a preponderance of the evidence. For these reasons, together with decades of favorable case law, the Cook Islands asset protection trusts are considered by many attorneys as the world's best.

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Not only do the Cook Islands might have arguably the best laws for asset protection, its political and economic stability makes it a premiere location for establishing an offshore trust. Its local economy is also very reliant on offshore services. A Cook Islands trust can be more expensive to maintain compared to other offshore alternatives as the trust requires a

professional trustee located within the jurisdiction.

Cook Islands Trust

The Cook Islands' legal system is very favorable toward individuals defending themselves in legal proceedings such as seizures and forfeitures, and it is widely considered to be among the most protective in the world for asset protection. The offshore asset protection trust statutes of the Cook Islands are among the most formidable asset protection laws. Even lawsuits or judgments originating from powerful countries, such as the United States, won't be able to reach assets placed into a Cook Islands Trust In order to be protected by these statutes, the assets must first be placed in a Cook Islands asset protection trust.

While assets are in the Cook Islands trust, the grantor can still retain full ownership and can transact with them or transfer them in or out of the trust. However, if there's a legal proceeding, the trustee in the Cook Islands can immediately take over the management of the trust, effectively keeping them out of reach of a potential creditor. The reason for this is if a U.S. court orders a defendant to turn over any trust assets, the defendant must comply. Failure to comply with a

court order is considered contempt of court and generally carries heavy penalties, including fines and even incarceration. Since the assets would now be under the administration of a trustee outside the U.S., the jurisdiction of a court in the U.S. doesn't reach a Cook Islands Trustee. Thus, a defendant will not have the ability to hand over any assets assigned to a Cook Islands Trust, which will defeat the purpose of the court order.

- The Cook Islands judicial system does not accept foreign court judgments. For example, if a plaintiff attempted to receive assets from a Cook Islands Trust trustee that was ordered by a U.S. court the Cook Islands would not recognize the judgment. The plaintiff would have to litigate or re-litigate the issue at law before a court in the Cook Islands.
- In the Cook Islands, a trustee (either a person or trustee company) will have undergone a comprehensive background check to become a licensed and bonded trustee as regulated by the Financial Supervisory Commission. Knowing a trustee is bonded, funds are then insured

against any wrongful actions by the trustee.

- In no way can the trustee of a Cook Islands Trust benefit from the trust. The trustee's responsibilities are to follow the terms of the trust, act as instructed by its grantor, and protect the trust in accordance with the laws of the Cook Islands should foreign courts attempt to seize the trust assets.
- Reputable trustee companies in the Cook Islands want to protect their standing as legitimate businesses and thus conduct Know Your Customer (KYC) checks on settlors attempting to establish trusts with them. KYC checks investigate a settlor's identity, financial history, and background to ensure they did not acquire funds by illegal means such as money laundering.
- To safeguard the settlors, trustee companies will have insurance policies to protect their clients should loss or negligence on the part of the trustee company occur. Trustee companies with insurance policies add another layer of protection to a trust.

Placing assets within a foreign country may be intimidating, but understanding the Cook Islands judicial system and the safety measures the Cook Islands trust companies take to ensure the security of your assets can grant peace of mind when forming a Cook Islands Trust.

History of Cook Islands Trusts

Offshore asset protection trusts as currently known only began around the middle of the 20th century. At the time, offshore trusts were only utilized by very wealthy individuals and families in the U.S. and U.K. It was more common to establish trusts closer to home, such as the Bahamas. Towards the end of the 20th century, offshore trusts became much more prevalent around the world. In the 1980s the Cook Islands became known as one of the most favorable asset protection jurisdictions in the world. The country's current law states that foreign court orders, such as those arising from the U.S., are disregarded by their courts.

Offshore asset protection as it exists today began with the Cook Islands International Trust Act of 1984, enacted by the Parliament of the Cook Islands. This law represented the first asset protection statute in the world and helped cement

the Cook Islands as the pre-eminent jurisdiction for asset protection trusts. Since then, the Cook Islands Asset Protection Trusts have offered the highest level of security available anywhere. The Cook Islands International Trust Act would also serve as a model for numerous other offshore jurisdictions around the world.

The Cook Islands International Trusts Act 1984 created a legal environment where English common law trust concepts can be used for tax, estate planning, and asset protection. An international trust is defined as a trust registered under the Act and in respect of which the beneficiaries are non-residents of the Cook Islands and one of the trustees is a licensed trustee company or a Cook Islands international company. All information pertaining to an international trust is confidential and subject to the secrecy provisions of the Act.

The Cook Islands has a well-developed and professional offshore trust industry, including a variety of qualified trustees. By 2013, there were over 2,500 foreign trusts established in the country. Over the years, there have been several attempts by U.S.-based plaintiffs or government agencies to reach funds held by Cook Islands

Trusts. None of these attempts have been successful. For example, the Federal Trade Commission failed to enforce a $37.5 million judgment against a U.S. citizen when the assets were held in a Cook Islands Trust.

Advantages of a Cook Islands Trust

A Cook Islands Asset Protection Trust is one of the most secure asset protection solutions in the market. The Cook Islands' legal system is very favorable towards individuals defending themselves in legal proceedings, such as seizures and forfeitures, and it is widely considered to be amongst the most protective in the world. The offshore asset protection trust statutes on the Cook Islands are among the most formidable asset protection laws.

Main benefits of a Cook Islands Asset Protection Trust:

- Protection for assets and investments, keeping them out of the reach of creditors, banks, or any court orders originating from outside the Cook Islands.
- A two-year statute of limitations on all

creditors that bring an action against you or the trust.

- The Cook Islands do not charge taxes on assets held under a trust.
- The Cook Islands' judicial system is considered "defendant friendly" and there are several barriers to litigation already in place via the Cook Islands Asset Protection Trust Act.
- A Cook Islands Trust can protect assets that aren't located within the islands, and you can transact with them electronically.
- Several types of trust arrangements are available and none of the trust deeds need to be publicly registered.
- A flexible trust structure that allows for various investment opportunities.

The Cook Islands Trust is well regarded as the best offshore trust to shield assets from lawsuits, claims, and creditors.

The first barrier is having to litigate in the distant Cook Islands. While the U.S. legal system makes it easy to file a lawsuit, and contingency fees mean plaintiffs can often sue others without paying a dime, the legal system in the Cook

Islands is not so considerate towards plaintiffs. The Cook Islands courts do not recognize foreign judgments. Bringing a lawsuit to the Cook Islands is an expensive and lengthy process.

If creditors seek to claim a settlor's assets held by a Cook Islands Trust, those creditors will have to file a lawsuit in the Cook Islands before the statute of limitation expires. They must then pay legal and court fees upfront and prove beyond a reasonable doubt the assets were placed in the Cook Islands Trust with the intent to defraud.

This entire process is lengthy and expensive, plus the statute of limitation is only two years in the Cook Islands, which would make filing a lawsuit an urgent matter.

Because of these factors, creditors will face significant hurdles if they attempt to breach a Cook Islands Trust.

Another benefit of Cook Islands trust law for the settlor is that creditors must hire a Cook Islands law firm to bring the claims. The Cook Islands law does not allow for contingency fee-based agreements. So, the creditor must be willing to pay legal fees in advance in order to bring a claim

against the settlor of a trust. They do so with no guarantee that they will win their case in court.

Another barrier is the fact that the legal burden will lie on the person bringing the lawsuit to prove beyond a reasonable doubt that assets were placed in the Cook Islands Trust with the objective to defraud. If a creditor does decide to pursue a claim against the settlor of a trust in the Cook Islands, the burden of proof is on the creditor. In most cases, meeting such standard of proof is quite challenging, considering that there are multiple legitimate reasons to set up an offshore trust.

Even lawsuits or judgments originating from powerful countries such as the United States won't be able to reach assets placed in trust there. An asset doesn't need to be on the Cook Islands for it to be protected. That said, due to jurisdiction, judgments against real estate assets in the U.S. may not be fully protected.

If a creditor manages to obtain a court order authorizing to seize trust assets before the statute of limitations expires, there are still several barriers in the Cook Islands legal and financial system that could frustrate these attempts.

What Are the Best Trustee Companies in the Cook Islands?

Trust companies are legal entities that are authorized to act as fiduciaries, agents, or trustees for the purpose of administration, management, and transfer of assets to a beneficiary. The trust company acts as an administrator of the trust assets in accordance with the terms of the trust document. Once the trust is settled and funded, the trustee is essentially in the driver's seat when it comes to the management of its assets.

Despite the significant physical distance, trust companies in the Cook Islands are not drastically different from those operating in the U.S. In the Cook Islands, all trustee company businesses are regulated by the Financial Supervisory Commission and are subject to the provisions of the Trustee Companies Act 2014. The Financial Supervisory Commission in the Cook Islands is an independent government agency in charge of the supervision of regulated financial entities and financial services in the Cook Islands. It is the licensing authority for all financial institutions such as banks, insurance companies, money-changing, and trustee companies.

Once assets are placed into the trust, it is up to the trustee to safeguard and manage the trust assets. The trustee, however, is not free to administer the trust assets as they see fit. They are always bound by the terms of the trust they agreed to serve.

In the case of an offshore trust located in the Cook Islands, only a judicial order from a court located in that country has legal effect. If a court order is issued in the U.S. or elsewhere, the trustee by law is not allowed to obey it.

Since asset protection trusts contain provisions shielding the trust assets from foreign court orders, offshore trustees are usually bound *not* to follow a U.S. court order requesting the disbursement of trust funds to pay for a lawsuit or claim. While a U.S. court could try to force the settlor or the beneficiary of the trust to pay, it is ultimately up to the trustee how to handle any assets held in trust, and a trustee located in the Cook Islands is well beyond the reach of the U.S. courts.

This gives the Cook Islands Trust a tremendous advantage in the field of asset protection. It also places tremendous emphasis on the right choice of trustee, as they might one day be forced to deal with a situation where a legal threat arises.

When selecting a trustee, it helps to think about whom you would want on your side in case of a crisis.

- Southpac Trust: Southpac Trust was established in 1982, making it one of the oldest and most prominent trust companies in the Cook Islands. In addition to trustee services, they offer turnkey corporate solutions, estate and succession planning, accounting, banking, and wealth structuring solutions. Southpac provides offshore services in the Cook Islands as well as the Island of Nevis.
- Ora Fiduciary Limited: Ora Fiduciary/Ora Partners is an innovative and proactive trustee company founded by the charismatic Puai Wichman, a veteran of the offshore asset protection industry. Ora Fiduciary is currently working with the Ministry of Finance and Economic Management of the Cook Islands to develop a "Smart Trust" platform, a promising new blockchain ecosystem for the Cook Islands.

- Asiaciti Trust Pacific Limited: Asiaciti Trust is a family-owned, wholly independent trust company originally established in 1978. Asiaciti has an impressive reputation based on its more than four decades of experience as a trusted fiduciary. The firm also boasts a truly global reach, with operations in Singapore, Hong Kong, the Cook Islands, Dubai, Nevis, New Zealand, Panama, and Samoa.
- Portcullis Limited: Portcullis prides itself on being one of the largest independent wealth managers in Asia. The firm began operations in 1984 as a law practice in Singapore. Since then, it has grown to provide trust, fund management, and family office services. They remain based out of Singapore and have offices in Hong Kong, Taiwan, New Zealand, and the Cook Islands, among others.
- Cook Islands Trust Corporation Limited: Cook Islands Trust Corporation first became licensed as a trustee company in the Cook Islands in 1988. Its managing director is a licensed attorney in New Zealand and a member of the Society of

Trust and Estate Practitioners, a prestigious global organization for lawyers, accountants, trustees, and other practitioners. In addition to asset protection trusts, the Cook Islands Trust Corporation also provides services for foundations and international companies.

- Trustees & Fiduciaries (Cook Islands) Limited: Trustees and Fiduciaries is a locally owned and operated trustee company based in the Cook Islands. The company is managed and controlled specifically to protect its clients against the threat of litigation. Trustees & Fiduciaries developed the Relationship Property Act, new legislation in the Cook Islands that allows a trust to keep the assets of high-net-worth families intact in the event of a separation.

Much like any other fiduciary, a good trust company should have a track record of stability, professionalism, and utmost reliability. After all, they are entrusted to oversee substantial trust funds for their clients.

Qualities like responsiveness and innovation are

increasingly important as high-net-worth clients have come to expect a superior degree of service.

Fortunately, thanks to its established reputation as an offshore center, the quality of fiduciaries available in the Cook Islands is on par with those in major financial centers across the globe.

Nevis Trust

The Island of Nevis is part of the nation officially known as the Federation of Saint Christopher and Nevis or St. Kitts and Nevis for short, located in the Caribbean about 1,300 miles southeast of Miami, Florida.

Nevis is the smaller island in the federation, with a population of about 12,000. St. Kitts and Nevis is a sovereign nation and member of the British Commonwealth. The legal system is based on English common law. The tax environment is very friendly: there is no income tax, estate or inheritance tax, or gift tax. While it has an excellent reputation with tourists, much of the local economy is driven by its status as a secure offshore hub for company formations and bank accounts. The country is firmly committed to secrecy. Nevis is also known in the United States for being the birthplace of Alexander Hamilton.

A Nevis Asset Protection Trust is simply an asset protection trust established under the laws of Nevis and administered from the Island of Nevis itself. But since asset protection trusts can be established under a variety of jurisdictions, why choose Nevis?

Over the course of decades, the island of Nevis has gained a reputation for being one of the most favorable jurisdictions in the world for asset protection and privacy.

Offshore trusts in Nevis are regulated by the Nevis International Exempt Trust Ordinance. These Nevisian laws vigorously protect the local finance industry and its offshore clients. Nevis Trust Legislation allows the grantor and beneficiaries protection from claims by imposing substantial barriers to plaintiffs.

Even the most determined of creditors would be smart to consider a settlement rather than attempt to break into a Nevis trust. To date one is hard-pressed to find a successful case of a private creditor penetrating a Nevis trust.

- To begin legal proceedings on Nevis, a plaintiff must file a bond of $100,000 with the Nevis Ministry of Finance

before bringing legal action against an international trust. A 2018 amendment to the laws changed the LLC requirement to an amount established by the Nevis High Court, but the bond to litigate a Nevis trust remains at $100,000 U.S. dollars.

- Contingency attorney fees are prohibited in Nevis. A creditor will have to pay out of pocket for the court bond and any legal fees incurred. Additionally, in order to bring a case in Nevis, a locally licensed attorney needs to be hired, not a U.S.-barred lawyer. Many of the attorneys licensed in Nevis will be unable to bring a case against local banks and trust companies due to conflict-of-interest rules.
- Nevis offshore trusts are tax-exempt under Nevis tax laws and can be settled by essentially any non-resident. Under the laws of Nevis, self-settled trusts can protect assets: the settlor can also be a beneficiary of the trust and maintain asset protection regardless.
- Nevis does not recognize foreign judgments. A court order from the United States, or any other country for that

matter, will not have an effect on the island of Nevis. A plaintiff needs to litigate the case in a local court in order to obtain an effective judgment against a Nevis trustee.

- The Nevis trust statute of limitations on fraudulent conveyance is two years from the cause of action. That means a court in Nevis will simply not accept a case claiming fraudulent conveyance and challenging the transfer of assets into the trust once this time period has elapsed.
- Nevis does not allow asset freezing orders. Many common law jurisdictions recognize injunctions that can freeze trust assets and prevent the beneficiaries from receiving or moving trust funds. The laws of St. Christopher and Nevis specifically disallow the use of any orders that would interfere with trust property.
- Nevis has a much higher standard of proof for civil cases. In order to win a civil case in the United States, the plaintiff needs only to prove his case by a "preponderance of the evidence." In Nevis, the standard of proof for civil

cases is "beyond a reasonable doubt." This is the highest standard in the common-law system and is the standard for U.S. criminal law.

While setting up an offshore trust may sound like a complicated process, in reality, it is not much different from establishing a trust under the laws in the owner's state of residence. It isn't necessary to visit Nevis to form a trust on the island. Instead, you can use a U.S.-based attorney to help form the trust using a Nevis-based representative. This means the formation process can be streamlined and prompt.

Under the Nevis International Trust Ordinance, a trust will require the following:

- Local Trustee: This is the person or organization within the island of Nevis that will have the authority to manage and control any trust property. Blake Harris Law can introduce clients to licensed, professional trustees in Nevis that have a stellar reputation in the offshore services industry.
- Grantor / Settlor: This is the person or persons who set up the trust and intend to

transfer property into it. The Grantor /Settlor does not need to be a Nevis resident.

- Beneficiaries: These are the people who stand to receive the property transferred into the trust. The beneficiaries can also be Nevis nonresidents.
- Due Diligence Process: International regulations require a certain amount of background information regarding the Grantor / Settlor of an offshore trust. The Nevis trustee will require documents such as a copy of a passport, proof of residence, and bank statements.
- Funding the Trust: Once the trust is signed and established, it is important to transfer assets into the trust. A Nevis trust can be used to hold LLCs, bank accounts, or investment accounts.

A trust registered in Nevis can hold a wide variety of investments and assets. Offshore bank accounts and LLCs can be opened under the name of the trust. Offshore bank accounts, stock market investments, real estate, and other assets can be held inside a Nevis trust. Importantly, while bank accounts can be opened with local banks in Nevis,

a Nevis trust can just as easily hold accounts from other offshore banking centers such as the British Cayman Islands, Luxembourg, or Switzerland.

The island of Nevis has been offering a variety of offshore privacy and asset protection solutions since the 1980s. The local trustees, trust protectors, and registered agents are some of the most experienced professionals in the offshore services industry. The Nevis Act has strong provisions protecting the confidentiality of information for a trust legally registered in Nevis. Any assets held in a Nevis trust will be protected from prying eyes trying to determine ownership.

Nevis LLC

While many people use LLCs, domestic trusts, and other asset protection methods to shield their assets from creditors and lawsuits, the courts in the U.S. do not always respect the integrity of these legal structures. Many sophisticated individuals are now turning to offshore LLCs to secure their assets.

The Caribbean Island of Nevis has become one of the world's most favorable locations to establish limited liability companies for both privacy and asset protection. The small island country's

commitment to providing safe legal arrangements for overseas residents has been proven since the passage of the Nevis Business Corporation Ordinance in 1984.

The Caribbean Island of Saint Kitts and Nevis has become one of the world's most favorable locations to establish limited liability companies (LLCs) for both privacy and asset protection. The island of Nevis enjoys defendant-friendly legislation, a well-established banking system, as well as strict privacy laws. A Nevis LLC can be used in combination with an offshore asset protection trust or on its own to hold and protect assets even if they are located elsewhere in the world.

For example, an offshore trust can be the member/owner of a Nevis LLC, providing two entities with separate layers of legal protection.

If used without a trust in place, a Nevis LLC can still provide offshore asset protection, along with flexible management, and lower upfront and ongoing expenses when compared to offshore trusts. Because it is not a full-fledged trust, a Nevis LLC on its own requires less paperwork and no offshore fiduciary to serve as trustee. One important difference between a trust

and a limited liability company is that the LLC only requires member(s), manager(s), and a registered agent in Nevis. A Nevis LLC can be formed with only one member who also serves as the manager and need not be domiciled in Nevis.

A Nevis LLC may be used for any lawful business purpose, either as a business venture or holding company. No initial capital is needed to fund the LLC and no officers need to be appointed. The LLC's operating agreement can be specifically drafted with asset protection in mind. The legal fees and the costs of a local registered agent tend to be lower than those of offshore trusts, accordingly, a Nevis LLC is a competitive alternative to a full-fledged offshore trust.

Nevis LLCs are entirely legal for U.S. citizens, U.S. residents, and others – you are simply forming an overseas limited liability company that must conform to local laws and regulations. A Nevis LLC may be used for any lawful business purpose, either as a business venture or holding company. No initial capital is needed to fund the LLC and no officers need to be appointed. The LLC's operating agreement can be specifically drafted with asset protection in mind.

There are many advantages associated with forming Nevis LLCs for asset protection. As a Nevis LLC is located outside of the United States, they provide an added degree or protection from U.S. judgments. Nevis has an extremely successful asset protection track record. For the past several decades, Nevis has been committed to shielding assets there from foreign judgments.

As with an offshore trust, a legal entity must be subject to a lawsuit in its home jurisdiction, in this case, it means filing a lawsuit in Nevis. Naturally, it is much harder to pursue and obtain a favorable judgment in an overseas court. Additionally, the nature of an overseas LLC means it's much more expensive for creditors to pursue. This increased difficulty is a powerful deterrent for creditors that don't want to incur high costs while pursuing assets abroad.

Another underlying benefit of offshore asset protection is that it provides more privacy. For anyone valuing privacy and discretion, using a foreign asset protection vehicle like a Nevis LLC is an excellent option. Unlike most LLCs formed in the United States, a Nevis LLC's ownership is not listed on any public database or record.

Using offshore asset protection methods isn't without its risks. You need to choose a country that has a stable political environment. Otherwise, a change in government or regulation could leave you exposed. Nevis is known for having a stable, business-friendly political system that's focused on attracting and protecting financial capital on the island.

While forming an overseas LLC might sound like a challenge, a new company can be registered in Nevis relatively quickly. Nevis LLCs allow for quick and convenient setup. Forming LLCs in Nevis is also affordable. The legal fees and the costs of a local registered agent tend to be lower than those of offshore trusts. You don't need to break the bank to afford the legal protections of a Nevis-based limited liability company.

Nevis LLCs provide excellent benefits without extensive maintenance requirements. In some cases, submitting annual financial reports is not required, which makes the process of maintaining an LLC much easier. If searching for an asset protection arrangement that doesn't require constant upkeep, this may be a suitable option. Nevis LLC can also be used together with other

asset protection entities such as a Cook Islands Trust for added security.

Offshore Trust Bank Accounts

High-net-worth individuals are at risk from spurious lawsuits, foreclosing lenders or creditors collecting on outstanding debts. Having money in offshore bank accounts makes certain assets difficult to access.

This is why having an asset protection plan is essential for anyone in a high-risk category. Banking offshore is typically one aspect of a more comprehensive asset protection strategy.

Offshore trusts are most effective for protecting cash in a secure foreign bank account. Any funds on deposit with a U.S. bank could potentially be reached by the U.S. court system.

In order to take full advantage of the protections offered by a Cook Islands Trust, it is best practices to deposit monies in a non-US account, such as Switzerland or Liechtenstein.

The most common reasons why individuals and companies open an international account include the following:

- Asset Protection: The ability to protect assets from lawsuits and divorce.
- Currency Diversification: Domestic banks tend to operate in the home country's currency, which may limit the ability of larger companies to conduct global business. Many offshore funds allow for multiple currencies, allowing for diversification and the ability to perform in the global financial market while also taking advantage of fluctuating foreign currency markets. However, while countries like the Cayman Islands may shield corporations from a high domestic tax burden, they do not offer an opportunity to avoid paying taxes altogether. Profits from foreign accounts will still need to be declared to the local tax authorities.
- Privacy: Many countries that provide offshore banking services will have laws enforcing banking confidentiality and privacy, allowing investors to conduct their activities more effectively. However, certain information remains confidential only so long as these offshore bank accounts are not involved

> in illegal activities, such as tax evasion, trafficking, or money laundering.

The offshore jurisdiction represents the lawful home of the trust, it does not necessarily mean the trust assets need to be domiciled in the same jurisdiction. Funds can be deposited in a bank account in Switzerland or Luxembourg and held in turn by a Cook Islands Trust or a Nevis LLC.

As with other offshore trusts, there are reporting requirements that the Internal Revenue Service imposes on U.S. persons with offshore accounts.

When thinking about international banking, Swiss banks will naturally be at the forefront of many people's minds. Switzerland is a country with a centuries-old tradition for stability and discretion that has grown to become the number one center for offshore finance. In addition, the privacy associated with Swiss private banking makes it an attractive option when considering where to bank.

Swiss banks have been extremely secretive about clients since at least the 1700s and the tradition has continued to this day. Additionally, the country's stable political climate and strong financial regulation makes it highly attractive for offshore clients. This translates to low levels of

financial risks and high levels of privacy that are virtually unmatched anywhere else. It is largely for these reasons that banks in Switzerland are among the most prestigious and respected.

Most people might believe that Swiss banking is all about high-end financial services and access to global investments. However, offshore banking can also play an important role in the context of asset protection. This is usually done with an offshore asset protection trust opening a bank account in order to hold its assets in a different jurisdiction.

Opening a bank account offshore can be a bit more challenging than working with a local bank, after all, one can't just walk into the nearest branch on the way to work. So, why not just keep banking at home as part of an asset protection plan? If asset protection is a serious consideration, going offshore makes a lot of sense.

While the benefits of offshore asset protection have been explained at length, in short, offshore asset protection is all about removing funds and valuable assets from the reach of local courts. An offshore trust removes the management and nominal ownership of any trust assets to a

different country such as the Cook Islands or the island of Nevis. Once this is done a court in the U.S. is unable to have authority over them. Because these jurisdictions are foreign sovereign countries, they can decide whether to obey a foreign judgment or ignore it.

A court in Canada normally cannot issue a judgment about a business dispute in Norway or California because it lacks the proper jurisdiction. A court needs to have a sufficient connection to the matter in order to justify why it should decide a case. If there is none, the court should refuse to hear the matter. Simply stated, a court's authority generally does not travel beyond the reach of the country's borders.

With an offshore trust, the trust assets are owned and managed from abroad, and it only makes sense to keep these assets beyond home borders as well. While it is entirely possible for an offshore trust to own a bank account in the U.S., doing so can place the funds back within the reach of domestic courts. This means the trust funds could potentially be seized if the local bank receives an order from the court, thus invalidating all the legal planning that went into developing the offshore trust structure.

While such a risk is not common, the assumption is this is largely due to the fact that most offshore trusts are properly maintained and rarely keep funds in the home jurisdiction. From an asset protection standpoint, offshore banking makes sense when working with an offshore trust. The added paperwork involved is a small price to pay for the benefit of having the funds out of reach of potential lawsuits at home.

It is not surprising to learn that most ultra-high-net-worth individuals rely on a combination of different investments such as stocks, real estate, private equity, hedge funds, alternative investments, and other financial vehicles. However, much like the rest of us, millionaires and billionaires are also in need of liquid funds and generally rely on major banks for this purpose. While offshore banking is less common for wealthy people in the U.S., globally, the ultra-rich rely on financial centers such as Switzerland, Singapore, and Hong Kong to diversify their holdings.

Normally, a sizable initial deposit is required by financial institutions in Switzerland. Most Swiss banks will have a one million dollar minimum in order to open an account. In some cases,

$500,000 will be an acceptable initial deposit for some banks. Keep in mind that the accounts will normally not be opened under a legal name, rather it is an asset protection trust that will be the named owner in the account. For lower initial deposits, there are other banking alternatives that have more permissive account requirements.

Thanks to our established connections, Blake Harris Law can help with finding the right institution to work with individual needs and level of assets. Blake Harris Law has numerous contacts in Swiss banking circles and can help connect clients with multiple alternatives. Blake Harris Law provides its clients with access to our global network of bankers as well as trust companies and trust protectors. Additionally, our firm can help clients with the funding process and help answer any questions that might arise during the process. It is important for us to maintain simplicity and peace of mind for our clients.

Opening an offshore account is frequently a financial decision with serious consequences, so it's vital to conduct the necessary research before starting an offshore banking journey. Factors to consider include:

- Language: While most countries offering offshore banking conduct their business in English, it's important to have effective communication with the bank staff.
- Reputation: Work with a bank that provides a stable and secure environment for transactions. Reading customer reviews and testimonials may give an idea of the level of service to expect, but it is recommended to talk to an experienced professional for their opinion.
- Banking services: People open an offshore account for many purposes, so be sure to ask the bank whether they can provide the appropriate service for specific needs.
- Initial deposit amount: Many offshore banks require relatively large sums to open an account, ranging from $100,000 to over $1 million. If necessary, shop around to find a bank that offers a manageable deposit. Some offshore bank accounts can be opened with as little as $10,000.

- Security and privacy: Banks in various jurisdictions have their own rules and regulations surrounding privacy and security. For instance, Swiss banks must protect the confidentiality of their account holders. Many countries will not have extra-judicial treaties with the United States, making them secure asset protection vehicles.
- Financial services compensation scheme: Many banks within the United Kingdom and European Union offer an FSCS, which insures account holders against bank, building society, or credit union insolvency.

Individuals opening an offshore bank may need to provide the following documents:

- A copy of a valid passport.
- An up-to-date picture.
- Proof of address.
- A completed W9 form for U.S. citizens.
- A completed W-8BEN form for non-U.S. citizens.

Opening an offshore account as a corporation requires the following:

- A copy of the certificate of incorporation.
- A certificate of good standing in the jurisdiction of company formation.
- Evidence of ownership or control of the business.
- A passport copy from everyone who controls or owns the business.
- A company resolution with the names of people authorized to act on behalf of the business.
- A completed W-8BEN form.

Using Offshore Trusts for Investments

The main purpose of an offshore trust is asset protection, but having an offshore vehicle as an option to invest through can be a useful option. A serious investor and a citizen or resident of the United States might have had the unpleasant experience of facing restrictions limiting investment options.

This is increasingly true with several innovative and promising cryptocurrency investments that the Securities and Exchange Commission will not

approve for people in the U.S., even in the case of sophisticated and experienced investors. While the increasing financial and banking regulation in the U.S. might be well-intentioned, the result is certain investments, particularly those regarding securities from a foreign country, can be off-limits to Americans.

An offshore trust structure can be instrumental as a legal way to avoid such restrictions. The main reason is that an offshore trust is a separate legal entity that is not considered a U.S. citizen or resident. Thus, an offshore trust is considered a foreign entity that is not constrained by U.S. regulations. That can open certain investment opportunities that would be otherwise unavailable, particularly for investors looking at attractive opportunities offshore or alternative investments.

Offshore investing simply means placing funds in any venture located outside of one's home country. This does not necessarily need to involve establishing foreign bank accounts. In fact, foreign investments may already be in a portfolio if the portfolio holds foreign stocks or internationally focused ETFs in existing investment accounts. One of the most common

ways for U.S. persons to invest abroad is through American depositary shares (ADS), which are U.S. dollar-denominated equity shares of a foreign-based company.

ADS trade on American stock exchanges like the New York Stock Exchange alongside shares of domestic corporations but they tend to carry yearly bank fees that are passed on to the U.S. investors. Additionally, not every foreign corporation is able to trade in the U.S. markets. Generally, it only makes sense for the largest global companies since they tend to be more popular with U.S. and global investors. To invest in smaller and less popular companies abroad, one would need access to foreign stock markets in order to place a trade.

One of the main advantages of investing through an offshore trust, apart from the built-in asset protection and a high degree of privacy that comes inherent with the offshore trust structure, is the availability of more investment options. Offshore jurisdictions place very few restrictions, if any, on the types of investments they accept. At the same time, several offshore hedge funds and mutual funds are designed specifically for non-U.S. investors, but investors from offshore

jurisdictions are almost always allowed. Once an offshore asset protection trust is established, a financial institution can help provide access to the global markets.

Investors in precious metals often prefer to hold their physical holdings outside of the U.S. for fear that legislation could be enacted to restrict or prohibit ownership of these types of investments. While it may sound far-fetched, there is an unfortunate precedent in the form of the United States Gold Reserve Act of January 30, 1934. Until 1974, it was illegal for U.S. citizens to own gold in the form of gold bullion without a special license. An offshore trust can also engage a custodian of physical assets in a foreign country.

Another benefit is the favorable tax treatment in the foreign country. Generally, offshore trusts are established in friendly jurisdictions that do not impose any additional income taxes on investment returns. While income taxes will still be applied by the U.S. Internal Revenue Service, this avoids the issue of double taxation. Some of the most common offshore trust jurisdictions include the Bahamas, Belize, the Cayman Islands, the Cook Islands, and the island of Nevis. While many offshore jurisdictions offer numerous

advantages, The Cook Islands and Nevis are considered by many asset protection attorneys as particularly good jurisdictions for their formidable asset protection legislation and good tax laws.

Offshore investments can entail much more than just opening a foreign bank account or brokerage account with an offshore financial institution. Offshore asset protection trusts are well suited to hold a variety of different assets. Foreign investments can include stocks of foreign corporations, commodities such as precious metals, foreign hedge funds or mutual funds, foreign currencies, cryptocurrencies, real estate, life insurance, and private equity investments.

Having the advantage of greater investment freedom can help diversify a substantial portfolio and potentially open the door for better return opportunities and improved capital gains.

An offshore financial institution can facilitate trading in stocks, options, futures, commodities, cryptocurrencies and other vehicles.

Since all the transactions are carried out by an offshore trust, privacy and asset protection are

assured. Any dividends received and capital gains can remain protected by the offshore trust.

How to Set Up an Offshore Trust

When considering setting up an offshore trust, first understand how they work.

There are three (and potentially four) parties involved in an offshore trust. These include the settlor, trustee, and beneficiary.

Frequently, an individual setting up an offshore trust will also include a trust protector. The protector is the potential fourth party.

The trust document will outline how trust assets should be managed, as well as the beneficiaries of the property.

The trust document includes the name of the trustee and their duties as they pertain to the trust.

Finally, if a trust protector is elected, their name and responsibilities will also be detailed in the trust document.

Once the deed of trust has been signed, it becomes a legal and operational entity. The terms and conditions that are established in the trust

become effective. It's important to carefully review the documents before the trust deed is signed to ensure that they reflect the wishes of the settlor. After the deed of trust is signed, the assets of the trust must be formally given to the trustee to hold. Once the assets have been transferred, they are legally out of the settlor's hands. The trustee is responsible for distributing them to the designated beneficiaries according to the terms established in the deed of trust.

Working With The Right Attorney

To establish and fund an offshore asset protection trust, work with an experienced attorney. Legal professionals can provide a list of locations that may best suit the intended purposes and outline the costs associated with each. The attorney will handle the responsibilities of establishing the trust and making the proper introductions to offshore providers who can help to safeguard assets.

Generally, that attorney will assist with the initial setup and ongoing maintenance.

When choosing an attorney, make sure that:

- They are reputable and knowledgeable about offshore trusts.

- They make their client comfortable enough to discuss assets and net worth.
- They can provide relevant experience they have with offshore trusts.

International jurisdictions can be complicated, and it is important to obtain professional advice from someone who can comfortably navigate the rules of the country chosen as a temporary home for valuable assets.

Cost, Pricing, and Yearly Fees for Offshore Trusts

When forming an offshore trust, there are a number of items that add to the cost of the trust formation such as trustee expenses, bank account fees, brokerage fees, trust protector fees, IRS reporting requirements, and annual fees. Taking this into account, an offshore asset protection trust formation will usually cost between $20,000 and $50,000 to set up plus the annual fees that will range from $5,000 to $10,000 per year.

Blake Harris Law has established longstanding relationships with offshore service providers that allow room for negotiations on trust formation fees to which Blake Harris Law can offer competitive pricing and affordable annual fees.

Know Your Client Requirements

Know Your Client (KYC) is a standard in the financial industry that ensures professional advisors can verify a client's identity, investment knowledge, and financial profile. The KYC rules are ethical requirements when dealing with customers opening and maintaining bank accounts. In the Offshore Trust context, KYC requirements are important for trustees, financial managers, and banking institutions. These professionals need to ensure they are aware of the individual they are working for and verify the source of funds is legitimate.

In order to comply with KYC, individuals must provide a government-issued ID as proof of identity. Many institutions require two forms of ID, such as a driver's license, birth certificate, social security card, or passport. In addition to the settlor’s identity, the current address must also be confirmed. This can be done either with the identification or more likely with an accompanying proof of domicile document.

Choosing a Trustee

The trustee is the person or institution who holds the trust assets’ legal title and administers the

trust. All trustees are legally bound to protect a settlor's assets on behalf of the trust's beneficiaries.

The trustee must be located in the same country as the trust to ensure that they are under the legal jurisdiction of only that country and no other. The trustee holds the legal title to the trust's assets and must not act in any way that could compromise the trust assets. If a settlor is under legal duress and required by a court to hand over his assets, the trustee acts as the failsafe that blocks the court's access to the assets. That's because the trustee is a local resident and isn't under the jurisdiction of any foreign court.

During times of legal threat, a trustee can make payments from the trust or transfer funds on the settlor's behalf, per instructions.

In jurisdictions like the Cook Islands, only a licensed and bonded professional fiduciary regulated by the Financial Supervisory Commission serves as the trustee. Only a firm or person that has undergone comprehensive and thorough background checks can become a licensed trustee. And since the trustee is bonded, funds are insured against any wrongful actions by the trustee.

Finally, the trustee cannot personally benefit from the trust. The trustee can only step in when courts from outside the offshore jurisdiction attempt to reach the trust assets. That is, a trustee can only behave in accordance with the local laws of their country, the terms of the trust, and the instructions of the grantor.

Funding an Offshore Trust

Funding an offshore asset protection trust involves transferring assets from the settlor's name to the control of an offshore trustee. In addition, assets should be transferred from U.S. custodians to banks and financial institutions located outside of the country.

The reasoning behind this is to help avoid the jurisdiction of the U.S. courts. If currency and other assets are left in a domestic location, there is a risk a court in the U.S. could bypass the foreign trustee and issue an order against the custodian.

The good news is assets do not need to be located in the offshore jurisdiction, it is enough that they are outside the U.S.

Fortunately, many of the world's best and most prestigious financial institutions operate outside the U.S. There are many banks in Switzerland and

Lichtenstein that can be used to open offshore investment accounts in other countries.

Once the funds are moved offshore, there are few links tying the funds to the U.S.

Why Working With an Offshore Trustee Is Safe

Every year, wealthy individuals and families fund offshore trusts with millions of dollars, the purpose is obviously to protect the assets, not to create additional risks. Fund misappropriation by trustees is not impossible, but it is exceedingly rare.

Despite the fact that professional trustees generally have a long track record of faithfully serving their clients for decades, are there any assurances that there will be no wrongdoing in the future? After all, trustee offices are often located in distant, difficult-to-reach jurisdictions. That is often the whole point of these asset protection structures.

Offshore asset protection trusts can be very effective legal solutions to protect from future legal claims. But are assets held in an offshore trust safe from trustee malfeasance? This question

is especially relevant when the trustee is located in a faraway offshore country.

The first point is to consider who really is the trustee. A trustee is the person or entity in charge of managing the trust funds. In the case of a bank account, for example, only the trustee is able to carry out transactions in the account, not the settlor or the beneficiaries. Trustees can write checks, withdraw funds, make electronic transfers and in many cases even buy or sell assets on behalf of the trust. This means they have the right to exercise a high degree of control over the funds.

Naturally, there is a higher degree of risk if a trustee is chosen from among friends, family members, or newly found fly-by-night operators. It almost goes without saying but selecting a properly bonded and regulated, professional trustee firm is the first step towards making sure of a legitimate company worthy of trust. But these are only the bare minimum requirements when it comes to considering a trustee company.

Many of the best well-known and respected professional trustee companies, certainly all of the ones we work with, also have long histories of working diligently for their clients. Blake Harris

Law has long-standing relationships with trustee companies all over the world, working only with the most reputable firms. In addition, Blake Harris Law has relationships with many of the law firms that send business to these trust companies. If there was ever any inappropriate behavior by a trust company, notice of such an incident would be known in a very short period of time and that trust company would pretty much immediately lose all of their customers.

The offshore trust world is very tight-knit, and even a rumor of impropriety would spread very quickly among attorneys, bankers, and other industry players.

Trustees have a fiduciary duty to act in the best interest of the trust and only withdraw funds in accordance with the terms of the trust agreement. For example, trustees are allowed to pay for routine transactions and fees as well as distribute funds to the beneficiaries as directed by the trust documents. They do not own any of the trust funds or have free rein to spend trust funds as they see fit. Doing so can be considered a misappropriation of the trust assets.

The trust as the entity is the actual owner of the funds. If a trustee fails to follow the terms of the

trust document, even due to an innocent mistake or inattention, they can quickly be removed from their position and even face legal consequences if they failed to act up to the standard of their fiduciary duty. A trustee that tries to misappropriate money from a trust they manage will simply not stay in business very long.

In the case of offshore jurisdictions such as the Cook Islands or Nevis, the asset protection industry is extremely important to the national economy. Financial regulators and law enforcement are well aware that issues within the trust industry could result in major consequences for the country as a whole. If offshore clients lose faith in the safety of their trust funds, a major source of revenue could disappear almost overnight.

One important distinction is that the roles of trustee and custodian are very different. A trustee is a manager of the trust funds, but it doesn't mean they will have physical possession or unrestricted access. The custodian is the institution that is actually holding the trust funds, generally a major bank or financial company. A major obstacle to trustee misappropriation is they don't physically hold any funds or trust property; they have to

request the bank for any withdrawals. This means there is always an additional pair of eyes on every transaction, as everything would be recorded by the financial institution.

As preferred custodians for offshore asset protection trusts, Blake Harris Law uses Swiss bankers. This is the most reputable and secure banking system in the world. These banks hold the actual funds and are another check on the trustee. If something suspicious happened, they would contact the settlor before releasing the funds or authorizing an unusual transaction. Naturally, these established banks are very familiar with trust bank accounts and are vigilant of any suspicious activity or requests on the part of trustees.

Trust protectors are also another major factor providing security to trust funds. Trust protectors exist to monitor and supervise trustee activities in an impartial manner. They can routinely request accounting statements from the trustees, make inquiries on behalf of the settlor, and ultimately remove and replace a trustee if needed. Professional trustee companies know their financial activities regarding an offshore trust can be supervised and examined by trust protectors at

a moment's notice. Obviously, this encourages the trustee to maintain clear and complete records as well as justifications for any transactions with regard to the trust in question.

Selecting the right trust protector who is professional and attentive to detail can give additional peace of mind. Blake Harris Law works with trust protectors that are professional companies with decades of experience in the business and a long track record of diligent work. They are considered a useful resource, but thankfully, relying on a trust protector to remove a trustee due to suspicions of wrongdoing is an extremely rare occurrence.

One common structure that really appeals to clients who are looking for high degrees of control is to have the settlor serve as the manager of their own limited liability company. With this structure, the offshore trust invests 100% of its funds in a private LLC, and the settlor acts as the manager of the company, which means having authority over the funds and investment decisions. Thanks to this structure, the settlor can immediately see any transactions regarding the funds held in the trust without having to request financial documents from the trustee.

While the offshore trust is technically the owner of all of the shares in the LLC, the settlor maintains the ability to manage and control the funds thanks to their management role. This gives the client a high degree of access and control over the trust funds while the trustee acts more as a passive investor in the company. This way, the settlor should actually be the first to see any financial transactions and should be able to quickly raise the alarm in case any suspicious transactions were to arise.

Thanks to the safety mechanisms discussed above, it is very difficult for a trustee to outright remove funds from trust bank accounts without being discovered. It is more common for trustees to misappropriate funds in a way that benefits them in an indirect manner, such as directing trust business to a related firm. Overcharging for their services beyond what is considered reasonable compensation and carrying out transactions with a related party can also be considered unjust enrichment on the part of a trustee.

No matter how good a reputation a professional trustee has, it never hurts to be familiar with the terms of the trust, and to carefully review all financial statements. Doing so can make sure that

any questions can be handled promptly before anything becomes concerning.

Trustee embezzlement is a type of theft that can carry heavy legal consequences including criminal charges. If there is suspicion a trustee is acting improperly, the first thing to do is gather as much evidence as possible and contact an attorney. Professional trustees should at the bare minimum have a complete trust accounting and should be able to provide these documents to the settlor or beneficiaries upon request. Transactions or payments that benefited a trustee but did not benefit the trust beneficiaries could be evidence of a breach of fiduciary duty.

Using a Trust to Protect Precious Metal Holdings

Wealth can take many forms. Precious metals including gold and silver have held great value for thousands of years. In the 21st century, gold continues to be a robust form of investment, fortified against the tides of inflation and deflation and more stable than many currencies.

Gold can offer shelter from the storm of geopolitical and economic instability when used

as a form of wealth preservation, value storage, portfolio diversification, or hedging against currency fluctuation. Precious metals may take the form of gold bullion, jewelry, or family heirlooms.

Despite the stability and security of tangible property like gold and precious metals, one must still take steps to protect these types of assets from liability. Otherwise, these items can be seized or liquidated by lawsuits or creditors trying to satisfy judgments or debt repayments. This is where a strong asset protection plan comes into play.

Using this strategy to protect assets like gold and precious metals is just like protecting cash, stocks, and other types of property. However, because gold, precious metals, family heirlooms, and other valuable items are tangible assets, make extra considerations and take additional steps to ensure that they're legitimately secure.

When it comes to protecting gold and precious metals in particular:

- When accepting gold into a trust, the financial institution will most likely

require due diligence such as a receipt of purchase or proof of ownership.

- If gold and precious metals are held under an individual's name by a depository or financial institution, the attorney can discuss retitling those accounts to the trust.
- If the accounts cannot be retitled but the wish is to stay with the same financial institution, an attorney can assist in opening a new account in the trust's name.
- If the gold and precious metals are at home or in a safe, the trust owner can often retain possession even after the trustee accepts the assets into the trust. These assets are usually subject to indemnities – i.e., the trust won't be responsible if anything happens to the assets while they're still in your possession. This might be appropriate for personal items like watches made with gold, diamonds, and other precious metals.
- If possession of the assets isn't desired or preferred, one can open a reputable and

secure vault account that can store the assets on behalf of the trust.

Many gold and precious metal investors use LLCs to hold title to these assets. While this can certainly offer a degree of asset protection, courts can and do "pierce the corporate veil" to go after a business owner's personal assets when they deem it appropriate. If the precious metals are in an LLC, ownership of that company can be transferred to an offshore asset protection trust, adding an additional level of security and privacy.

Offshore Trust Taxation

A common misconception is that high-net-worth individuals can avoid paying their income taxes by stashing their money offshore. Offshore trusts are not a means to avoid paying taxes or hiding assets from the tax authorities. The IRS has strict reporting requirements for offshore trusts and offshore bank accounts that need to be followed.

Offshore Asset Protection Trusts are generally structured to be tax-neutral for U.S. tax purposes. Tax neutrality means the formation of the trust will not affect the settlor's U.S. income, gift, or

estate tax burden. To achieve this, the transfers to the offshore trust should be designed to be incomplete gifts for purposes of Subtitle B of the Internal Revenue Code (but effective for creditor protection purposes).

Due to the settlor's retained interests in the trust, it should be recognized as a grantor trust for U.S. income tax purposes. This results in tax neutrality and relative simplicity of reporting requirements under current law.

IRS Requirements

The administrative and reporting requirements are extensive and can be divided into three phases: preliminary paperwork, trust paperwork, and tax return paperwork. The penalties for failing to submit the required paperwork are demanding, and it is vital to follow all requirements, to ensure that you follow all reporting requirements every year.

First, to streamline the administration of a trust in the U.S., the trust settlor should appoint a "U.S. Agent" for the offshore trust. A U.S. Agent is an official designee for the trust who is authorized to give further information about the trust to the

IRS. The U.S. Agent for an offshore trust can be the grantor/settlor of the trust, an attorney, or the C.P.A.

IRS Instructions for Form 3520 define a U.S. Agent as:

"a U.S. person … that has a binding contract with a foreign trust that allows the U.S. person to act as the trust's authorized U.S. agent in applying sections 7602, 7603, and 7604 with respect to:

Any request by the IRS to examine records or produce testimony related to the proper U.S. tax treatment of amounts distributed or required to be taken into account under the rules of sections 671 through 679, with respect to a foreign trust; or any summons by the IRS for such records or testimony.

While it is not mandatory to have a U.S. Agent, drafting paperwork between the trust owner and the trustee of the offshore trust to appoint a U.S. Agent should be the first step taken after establishing the trust. Reporting requirements in the absence of a U.S. Agent are more onerous and cause loss of many of the privacy protections afforded by the offshore trust.

Once the U.S. Agent has been appointed, file for a Tax Identification Number (TIN). Obtaining a TIN does not in and of itself subject an offshore trust to U.S. taxation or change the tax structure of an offshore trust, so don't be concerned about tax implications by doing this. It simply provides a unique identifier for the trust, which allows the IRS to track the trust throughout the various filings required.

Finally, if the creation of the offshore trust is treated as a gift for U.S. tax purposes, a gift tax return will need to be filed. Whether funding the trust is a taxable gift depends on the specific circumstances and is a topic to discuss with an estate planning and tax attorney.

All the forms covered so far are filed separately from an individual's tax return. However, a U.S. federal income tax return will need to include information regarding the offshore trust as well. If a third party prepares the taxes, make sure the tax preparer is aware of the offshore trust, and that they have the requisite knowledge and experience to handle this type of work.

If the offshore trust structure includes a foreign financial account (such as a non-U.S. bank or

brokerage account), ensure that the questions at the end of Schedule B is filled out appropriately. This is the schedule on tax returns that is used to report interest and dividend income. These questions must be answered correctly to report interest and dividend income in applicable foreign accounts.

If the offshore trust structure comprises non-U.S. entities under the trust, additional forms may need to be filed to report the income of this entity, depending on the U.S. tax treatment of the entity. If the entity is treated as a corporation for U.S. tax purposes (the most common scenario for non-U.S. entities held by trust), the appropriate form is Tax Form 5471. If the entity is treated as a disregarded entity for tax purposes, you may need to file Tax Form 8858. A tax attorney can assist in selecting the best entity classification for any entities owned by an individual or an individual's trusts, and file Form 8832 to elect appropriate treatment if necessary.

If the offshore trust structure owns assets worth at least $50,000, and these assets include a non-U.S. entity or a non-U.S. bank or brokerage or other financial accounts, IRS Form 8938 may be

required. This form was introduced in 2011 and serves to collate relevant information included elsewhere in a return, essentially notifying the IRS of substantial ownership in offshore assets.

FBAR Compliance

Once all the preliminary paperwork is completed, it is time to complete all the reporting requirements for the offshore trust. These requirements include Forms 3520-A, 3520, and FINCEN Form 114 (also known as FBAR).

The first form that must be submitted is IRS Form 3520-A. This form is filed by the trust itself, rather than the taxpayer. It cannot be filed electronically and must be physically mailed. The 3520-A provides information to the IRS about the trust, its investment structure, sub-entities, assets held in trust, and income or loss on the trust's investments. Generally, the first a 3520-A is filed, expect a time-consuming process – it's necessary to have a thorough understanding of investment structure and all legal documents. For this reason, it is highly recommended to consult a professional to assist in filing Form 3520-A.

The second form to be submitted is IRS Form 3520, the companion form to 3520-A. Unlike

3520-A, which is filed by the trust itself, Form 3520 is filed by each settlor/grantor and beneficiary of the trust. As part of preparing Form 3520-A, the offshore trust will provide a statement to the settlor and each other grantor and beneficiary that outlines all income earned by the trust each year, and all distributions made by the Trust that year, as well as any other facts pertinent to the income and distributions of the trust.

When filing Form 3520, attach this portion of the trust's Form 3520-A to Form 3520. Failure to attach this statement to Form 3520 can cause issues with the IRS. This is one of the reasons why it's important to appoint a U.S. Agent, as the U.S. Agent is authorized to sign the IRS Form 3520-A. It is crucial to ensure this form gets completed on time and that the statement required for 3520 is distributed to the grantor(s) and beneficiaries on time.

The last required paperwork related to the trust to be filed is FINCEN Form 114 (FBAR). Form 114 (which is commonly called the Foreign Bank Account Report or FBAR) is only required if the trust structure includes a foreign financial account (such as a bank account or brokerage account)

with a balance of at least $10,000. Since most trusts do include such a bank account, FINCEN Form 114 is considered an essential part of the trust reporting requirements. This form is filed separately from a tax return using a separate Treasury Department e-filing system.

Do not take the FBAR lightly. If unsure whether an account meets the threshold for reporting, err on the side of caution. The penalty for failing to timely file the FBAR starts at $10,000 and can be as high as 50% of the account balance if the IRS determines that the failure to file was "willful." For best outcomes, always consult a tax professional.

If the offshore trust invests in a U.S. business or an offshore corporation that does business in the United States, and such investment is equal to or greater than 25% of the business, the corporation may need to file Form 5472 to report U.S. source income. Finally, if assets are transferred to a foreign corporation held by the offshore trust, it's required to file Form 926, and if assets are transferred to a foreign partnership held by the offshore trust, it may be necessary to file Form 8865.

IRS Penalties

There are compelling arguments for the use of offshore trusts to protect assets and part of estate planning. However, it is vital to ensure all IRS requirements are followed for required paperwork when using offshore trusts in an estate plan. Failure to follow the reporting requirements can result in severe penalties.

Failure to file Form 3520-A or filing an inaccurate or incomplete Form 3520-A is punishable by a penalty of the greater of $10,000 or 5% of the gross value of the trust assets held in trust for U.S. persons. The penalty is assessed for each applicable year, and the minimum penalty is $10,000.

Likewise, if any U.S. grantors or beneficiaries of an offshore trust fail to file Form 3520, they are assessed an additional penalty of the greater of $10,000 or 5% of the gross value of the trust assets owned by U.S. persons.

The most severe of all is the penalty for failing to file FINCEN Form 114. If the failure is found to be non-willful, the penalty is $10,000 per violation. If the failure is found to be willful, however, the penalty is the greater between

$100,000 or 50% of the amount in the account for each violation.

Offshore Trusts and Bankruptcy

Offshore asset protection trusts, including Cook Islands Trusts, are less effective in case of bankruptcy. An offshore asset protection trust will protect assets from a creditor in civil courts, but generally will not work in bankruptcy court. When a debtor files for bankruptcy, he is responsible to surrender all assets regardless of how or where they are held.

Bankruptcy courts are federal courts with broader jurisdiction over assets under federal law, while state courts have more limited reach. U.S. bankruptcy courts tend to disregard trust structures and include any assets in the debtor's net worth. Another important factor is bankruptcy is a voluntary procedure, the debtor chooses bankruptcy to seek the protection of the court. Bankruptcy courts are skeptical of individuals trying to benefit both from offshore trust and the U.S. bankruptcy laws.

Funding an offshore asset protection trust means moving assets out of the reach of future civil

creditors including the bankruptcy court. Bankruptcy courts may attempt to disregard a foreign trust, however, due to the limited jurisdictional reach of the bankruptcy trustee assets held in a foreign trust will remain unreachable to the bankruptcy trustee.

Statute of Limitations and Voidable Transfers

A statute of limitations is what the law prescribes regarding how long a person has to bring legal action regarding a specific case. If the statute of limitations has passed, the plaintiff is generally barred from bringing his lawsuit. Fraudulent conveyance means transferring assets with the deliberate intention of putting the assets beyond a creditor's reach, especially when the creditor has a legal claim to the asset. That means after the statute of limitations passes, a creditor can no longer bring a case to legally seize a debtor's assets.

When transferring assets to an offshore account, there is a two-year statute of limitations for the creditor to bring an action against the individual or the trust. The statute of limitations starts counting from the day of the cause of action. Cause of action is the fact or event that enables a

person to bring a legal action. Once the statute of limitations runs out, the creditor can no longer bring claims of fraudulent conveyance in a court in the offshore jurisdiction. The assets held by the offshore trust become settled and therefore secure.

Despite the association, voidable transfers do not necessarily mean fraud. Fraud is a criminal offense punishable by penalties imposed by a criminal court. Voidable transfers are generally civil matters. Anyone found guilty of fraudulent transfer is generally subject only to civil penalties, not criminal ones. In a court of law in many offshore trust jurisdictions, the burden of proof regarding claims of fraudulent conveyance lies with the creditor.

The burden of proof for a fraudulent conveyance for a criminal matter is beyond all reasonable doubt.

This is the same burden of proof typically used in criminal cases in the U.S. This is a much stronger burden of proof than the “preponderance of evidence” burden which is typically used in the civil courts of most jurisdictions.

A creditor must prove the settlor of an offshore trust intended to defraud by settling, establishing, or transferring assets into the trust. They must conclusively establish that the trust was created with the explicit intention of defrauding the individual creditor bringing the claim.

Claims that the trust was established to defraud general claimants are not sufficient. If the settlor had any other reason for creating the trust the claim will not meet the burden of proof.

Alternatives to Offshore Asset Protection

Domestic Asset Protection Trust

In the world of asset protection, domestic asset protection trusts ("DAPTs") are the more common, and more economical alternatives to the offshore trusts. A Domestic Asset Protection Trust is an irrevocable trust in which the beneficiary can be the same person that created the trust, and the trust's assets are managed from within the United States. While some people may be tempted by the convenience of having their trustee located closer to home, domestic trusts are not without their downsides when it comes to protecting wealth.

Unfortunately, everything from federal laws, conflicting state laws, and different states' public policies seem to count against U.S.-based asset protection trusts. What are the disadvantages of domestic asset protection trusts when compared with their more robust alternative, offshore asset protection trusts? The most obvious problem with these types of trusts stems from the fact that laws regarding asset protection trusts do not exist in every state.

Currently, only the following seventeen states allow people to settle an asset protection trust under their jurisdiction: Alaska, Delaware, Hawaii, Indiana, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming. Neither the settlor nor any of the beneficiaries need to live in one of these states, but the trustee needs to be located there and the trust management needs to take place in the state where the trust is settled.

While these types of asset protection trusts may be gaining recognition in more and more states over the years, the protection offered by these types of trusts is still quite limited. Even for

someone living in a state that does recognize them, a U.S.-based asset protection trust could be entangled in a lawsuit in a completely different state court. Once this happens, the state court could disregard many of the legal provisions that are meant to provide legal defenses to the trust funds.

Instead of being managed from a secure, offshore jurisdiction such as the Cook Islands, or Nevis, domestic asset protection trusts are generally settled in states such as Nevada, Wyoming, or South Dakota. While offshore trusts seek to escape the jurisdiction of U.S. courts by transferring assets abroad, domestic trusts fall squarely under the control of domestic courts, whether state or federal. That means there is little in the way of preventing a local lawsuit against the trust. A plaintiff can engage any number of contingency-based attorneys and go after trust assets in their local state court.

While increasingly more states have been recognizing these legal structures, not every state will respect the integrity of a domestic asset protection trust. Because domestic asset protection trusts operate based on state laws, there is less reliability if facing an out-of-state

lawsuit. Article IV of the U.S. Constitution states all U.S. states must give "full faith and credit" to the judgments of all other states, which means a lawsuit in any state is equally valid, regardless of whether the jurisdiction recognizes domestic asset protection trusts or not.

In our legal system, the plaintiff is the master of the complaint, and he or she is free to file their suit in any court as long as the minimum jurisdiction requirements are met. This can leave the defendant exposed if they are sued in a state that does not recognize asset protection trusts as legitimate entities. More alarmingly still, the case history in federal courts is also very inconsistent.

Asset protection trusts have existed in the U.S. for a number of years now and attorneys have had numerous opportunities to test the waters when it comes to bringing these trusts to the courts. While domestic asset protection trusts do offer a degree of legal protection to assets, the results from the courts when defending these types of trusts leave much to be desired. Instead of providing reliable legal protection, it seems domestic trusts might be offering only a false sense of security to the settlors and their families.

"Battley v. Mortensen" was one of the first cases that resulted in a void transfer to an Alaska asset protection trust. Even though the settlor was solvent at the time the trust was formed, and years passed before he became indebted, the funds held in trust were still included in the bankruptcy estate. Despite the favorable facts, this case proved that the main drawback of domestic trusts was lack of predictability in a result. Since bankruptcy is regulated under federal law, there is no guarantee the courts will give credence to the state laws that recognize domestic asset protection trusts.

In "Toni 1 Trust v. Wacker" an asset protection trust settled in Alaska was the subject of a bankruptcy court proceeding in Montana. While the defendant tried to secure jurisdiction in Alaska, since according to Alaska state laws, only courts in that state have jurisdiction regarding Alaska trusts. The court in Montana conceded that while it is true that Alaska statutes state they have exclusive jurisdiction over Alaska trusts, a state statute cannot have the power to limit other states' rights with regard to trust property. Unfortunately, while a state such as Alaska may recognize the asset protection trusts and claim they have exclusive jurisdiction, a lawsuit in a

different state may still go forward, meaning trust assets can be placed at risk.

"Dahl v. Dahl" is another significant case in the field of asset protection, and one that exposed another important flaw in domestic trusts. The Dahl case is a divorce proceeding in Utah in which one of the spouses had set up a Nevada asset protection trust, and then marital assets were transferred into the trust. Years later, the couple filed for divorce in their home state of Utah. On appeal, the issue was whether the trust should be included as part of the divorce proceedings or whether it should be considered the separate property of the settlor. Despite the trust language stating that the trust should be governed by Nevada law, the Utah Supreme Court applied their own law to the matter and decided to disregard the trust.

These cases prove that even in state court, where there is no federal matter to be resolved or federal law applied, a court in a different state can apply its own state law over a trust formed outside of the state.

Domestic trusts can be extremely vulnerable to unpredictable legal results anywhere in the country, even in state courts. The main lesson

arising out of these cases is that domestic trusts simply do not provide the same degree of protection and legal defense that offshore trusts can offer.

The Titanium Trust℠

Blake Harris Law is proud to provide our clients with a variety of asset protection solutions to fit their individual needs. For years, we have offered offshore trust solutions that provide the highest levels of legal protection. The Titanium Trust℠ uses a combination of domestic and international elements to provide exceptional flexibility and protection.

The Titanium Trust℠ is Blake Harris Law's proprietary Asset Protection Trust that combines the protection of an offshore trust with the convenience of a domestic asset protection trust. The Blake Harris Law team has created an asset protection trust that combines the strongest level of legal protection while avoiding the ongoing costs and compliance requirements of offshore trusts reporting requirements.

Like titanium metal—strong and lightweight—the Titanium Trust℠ has strength in that it protects assets in the United States but with the added

advantage of allowing quick movement of assets offshore if needed. This is achieved through a network of International Trust Companies, Trust Protectors, and Bankers who work together to help safeguard assets.

With the Titanium Trust℠, the trust assets can remain in the United States unless and until a legal threat arises. If there is ever a risk of a lawsuit, the trust assets can be moved offshore and a licensed, professional offshore trustee can take over the management of the trust. Under this arrangement, once the trust is moved offshore, the assets cannot be reached by U.S. creditors, even if they ultimately succeed in their lawsuit.

There are only a handful of jurisdictions around the world with laws drafted to support the highest levels of protection. The Titanium Trust℠ can rely on the best of these jurisdictions, the island nation of Saint Kitts and Nevis as well as the Cook Islands to serve as the offshore sites of administration for the trust. The Cook Islands is widely recognized by legal experts as the nation with the most favorable asset protection laws and the most established case law history. That being said, assets do not need to be located in these countries; they can be held at internationally

recognized banking centers such as Switzerland and Liechtenstein, or assets can be held in cryptocurrency.

This diversity of jurisdictions means reaching the trust to collect its assets is an extremely difficult task even for a highly motivated plaintiff or creditor. Offshore jurisdictions such as the Cook Islands do not recognize or give effect to certain judgments of foreign courts. This means anyone attempting to reach the trust would need to travel around the world to take their legal battle offshore to an unfavorable and unfamiliar jurisdiction. Since these offshore jurisdictions are not under the jurisdiction of any U.S. courts and do not allow for contingency-based litigation, a plaintiff would need to spend considerable sums of money in attorney fees and court costs to pursue their lawsuit abroad.

A Titanium Trust℠ can protect a variety of different assets including:

- Cash
- Securities
- Intellectual Property
- Real Estate
- Cryptocurrency

- Digital Assets

The Titanium Trust℠ relies on the most favorable asset protection jurisdictions in the world to provide the highest level of legal protection available anywhere. It combines the most powerful and time-tested tools for asset protection planning to shield a variety of assets from lawsuits.

When faced with the potential of a legal claim or other possible source of liability, people want to know how to best protect their assets. While a seemingly obvious (but often wrong) answer is to gift everything one owns to loved ones if ever sued. However, federal and state laws exist that provide remedies for certain transactions by a debtor that are unfair to the debtor's creditors. That means a court could see through these gifts and choose to disregard them. In addition, giving assets away means permanently losing control over whatever assets were gifted.

One way to protect assets from creditors is to establish a Titanium Trust℠. The Titanium Trust℠ is established in the U.S. and operates initially as a domestic trust. A domestic trust is controlled from within the U.S. and subject to the

jurisdiction of a U.S. court. Domestic trusts holding U.S.-based assets are not subject to the IRS requirements regarding foreign bank accounts.

The trust document includes provisions defining what possible events could constitute a crisis. This could include a lawsuit or other event that could give rise to liability. If such an event occurs, control of the trust is transferred to a trustee in the Cook Islands. The trust ceases to be a domestic trust and converts to a foreign trust. The assets of the trust will become highly protected. The increased protection results from the fact that control over the assets has moved to a country that is not subject to the jurisdiction of U.S. courts. In other words, if the grantor loses a lawsuit in the U.S., the assets remain out of reach by whoever is attempting to enforce the judgment.

Even when the assets are held in the offshore trust, the grantor can remain the beneficial owner for the life of the trust. Not only does the grantor remain the beneficial owner, but they can also request the foreign successor trustee make distributions from trust assets by expressing their wishes. In other words, just

because the funds are in the trust does not mean that they are permanently unavailable to beneficiaries.

It is important to note that even after control of the trust is transferred offshore, the grantor does not lose access to the trust assets. The offshore trustee can still administer the trust for the benefit of the grantor. For example, while they should probably refrain from using the money to buy property for the grantor, they can use the funds to rent property on their behalf or pay the credit card bill of the grantor.

One of the advantages of the Titanium Trust℠ is it can be temporary in nature. A legal threat can trigger the transfer of the funds to an offshore bank. Once the lawsuit is over, the trust assets can be transferred back to the U.S. This means that, depending on the threat to the assets, the location of the trust can change.

The concept of a Titanium Trust℠ is tailored to individuals who are interested in protecting their wealth from a potential legal claim. For example, a physician could be threatened by a possible malpractice suit. If the physician establishes a Titanium Trust℠, they can protect their assets if they are ever threatened in a lawsuit.

As a client of Blake Harris Law, our firm can guide you through every step of the way to ensure a clear understanding of options regarding offshore successor trustees, trust protectors, and international banking institutions. While the Titanium Trust℠ is not for everyone, those with a net worth of over half a million dollars may want to consider how they could benefit from setting up a Titanium Trust℠.

CHAPTER SIX

ASSET PROTECTION FOR REAL ESTATE

> Someone's sitting in the shade today because someone planted a tree long ago.
>
> **~ Warren Buffett**

Real estate investors know that rental properties can produce tremendous returns, but very few consider real estate can also result in great risks for investors. This isn't in reference to a potential market downturn or the occasional difficult tenant, but rather to a lawsuit that could result in bankruptcy.

The following will discuss several different legal options investors can use to protect their rental properties. Whether it is a single-family home or an apartment building; commercial, residential, or undeveloped land; no real estate investor can afford to put their entire net worth at risk.

Imagine for a moment that, after years of hard work, a tenant in a rental property files a claim

against their landlord. Perhaps the tenant claims there's toxic mold in the home or undisclosed lead-based paint. Maybe it's not even one of your tenants – guests, workers, neighbors, even a trespasser who tripped over a downed tree limb on the property – has the right to sue. The reality is a lawsuit can come anytime and even from the most unexpected of sources. If protective legal steps have not been taken, entire investments could be lost in order to satisfy a judgment.

PROTECTING PROPERTY
MEANS DEVELOPING A STRATEGY
THAT SHIELDS WHAT ONE OWNS
FROM CREDITORS.

Asset protection planning aims to reduce the potential liability from a future lawsuit. Protecting property means developing a strategy that shields what one owns from creditors. It's not necessary to have a multimillion-dollar real estate portfolio to start thinking about asset protection; even a retiree trying to augment a pension with a single

rental property needs to be aware of the potential legal risks.

The goal of asset protection is to use the laws available to protect what an individual owns from creditors and to keep one bad turn of events from turning into a life-altering setback. Asset protection planning can avoid the loss of property – it's as simple as that. It's perfectly legal and can make a world of difference when negotiating a settlement agreement, but it's absolutely necessary to start the process well in advance. Do not wait until someone has already sued; it might be too late to properly protect against that claim.

There are several ways to protect real estate investments, including single-member LLCs, limited partnerships, and asset protection trusts. Most often, a combination of these will prove most effective in defending against a potential lawsuit.

Offshore Trusts and Real Estate

An offshore trust is not ideal for protecting real estate located in the U.S. By its nature, real estate cannot be physically removed from its location, so there is a risk a court could obtain jurisdiction

over U.S. real estate even if the title is ostensibly held by an offshore trustee. While offshore asset protection trusts can be used to protect U.S. real estate, this can be done best in combination with a process known as equity stripping.

Equity stripping adds a degree of complexity to an asset protection plan, it is often the only option when it comes to dealing with challenging assets. Equity stripping involves using real estate or other immovable assets as collateral and obtaining substantial loans. The proceeds of the loans can then be transferred to the bank account of the offshore asset protection trust so they can be protected. While the original assets themselves must remain in the U.S., the fact that these large loans exist means there is little equity remaining for a potential claimant or creditor.

CHAPTER SEVEN

CRYPTO-CURRENCY AND ASSET PROTECTION

> If we command our wealth, we shall be rich and free; if our wealth commands us, we are poor indeed.
>
> **~ Edmund Burke**

Cryptocurrencies can provide a secure and universal form of payment. They can be stored digitally and can operate without the use of a middleman or bank. Cryptocurrency is an internet-based digital token designed as a medium of exchange.

Since cryptocurrencies are universal, it is the ideal asset to be used in conjunction with an offshore trust account. To transfer a digital wallet to a trust, give the trustee the password along with a contemporaneous memorandum explaining what the wallet contains and how to access it.

These documents must be updated regularly to ensure they remain current, as a lost or out-of-

date password can mean the cryptocurrency is inaccessible forever after death.

Many investors are attracted to Bitcoin and other cryptocurrencies due to the promise of security, confidentiality, and potential for profit touted by many industry participants. While the use of blockchain technology in finance has already created several revolutionary innovations in finance, many investors in cryptocurrency might be overestimating just how safe and secure these assets really are.

Cryptocurrencies are exposed to a myriad of risks both online and in the real world. Numerous threats such as hackers, failures of brokers and exchanges, to everyday risks of potential litigation can put these assets in jeopardy.

Anyone holding a significant amount of their net worth in cryptocurrency should take steps to ensure their holdings are as protected as possible. Fortunately, tried and true legal solutions exist that can help protect wealth from a variety of threats, and cryptocurrency can be safeguarded just like almost any other type of asset.

Many believe cryptocurrency by its very nature provides a degree of asset protection due to its

apparent anonymity and potential to avoid third-party risk if the owner personally holds his coins or tokens in a physical wallet. However, the protection afforded by these benefits is not absolute, far from it. If an owner of the cryptocurrency is involved in litigation or bankruptcy, a court can require disclosure of all assets, including any cryptocurrency owned.

ANYONE HOLDING A SIGNIFICANT AMOUNT OF THEIR NET WORTH IN CRYPTOCURRENCY SHOULD TAKE STEPS TO ENSURE THEIR HOLDINGS ARE AS PROTECTED AS POSSIBLE.

The anonymous nature of cryptocurrency can make it harder to determine the owner of a particular coin or token but failing to disclose these assets when compelled by a court or government body can constitute fraud. Failing to honestly disclose assets when requested by a judge can result in a charge of contempt of court, which carries heavy penalties including imprisonment. That means cryptocurrency can be

just as exposed as any other personally held assets in the event of litigation.

Asset protection solutions continue to be of great importance in the cryptocurrency space. As people become more interested in this asset class, those with significant cryptocurrency holdings should make sure their wealth is protected. Just like traditional financial assets such as cash, bonds, or publicly traded securities, cryptocurrencies can be safeguarded by using asset protection solutions such as offshore limited liability entities and offshore trusts.

If a legal claim ever arises, the owner can turn over management authority over his cryptocurrency holdings to a third-party trustee, thus leaving the cryptocurrency effectively out of his hands for legal purposes. When structured effectively this legal solution can provide remarkable asset protection for almost any type of holdings, including many of the most common cryptocurrencies.

This may come as a surprise to many who wrongly believe cryptocurrency is beyond the reach of the governments and courts, but Bitcoin and other cryptocurrencies can be garnished by judgment creditors. When cryptocurrency

accounts are held in popular exchanges such as Coinbase, Gemini, and others, they are vulnerable to being frozen or seized in case of government action. If accounts are held in any of these brokers, it is likely an agreement to this risk occurred when accepting their terms of service. Bitcoin and other cryptocurrencies are also not exempt assets in case of bankruptcy.

As the use of cryptocurrency becomes more widespread, creditors and bankruptcy trustees increasingly look into crypto wallets or accounts. Government entities and regulatory bodies are also increasing their sophistication when it comes to taking possession of cryptocurrency.

In early 2022, the United States Department of Justice announced a landmark seizure of 94,000 Bitcoin valued at over US $3.6 billion. As the caselaw continues to develop in this regard, one should expect cryptocurrency garnishments and seizures in the U.S. to become more common. Those who rely solely on the privacy of the blockchain to keep their assets safe might be missing the bigger picture.

Most people understand that cryptocurrencies are generally less safe than more traditional financial assets. While common sense approaches such as

avoiding keeping large amounts of cryptocurrency on exchanges, not sharing confidential wallet information online, and diversification can help preserve cryptocurrency investments, having comprehensive legal protection requires more.

Legal risks can be anticipated and minimized by using legal asset protection solutions to hold cryptocurrency. One of the best strategies to protect cryptocurrency assets is through an asset protection trust. Asset protection trusts can help safeguard a variety of different assets, from traditional investments and cash accounts to a variety of cryptocurrency coins, tokens, and NFTs.

When transferring cryptocurrency into an offshore account, it is crucial to use a trustee having a high level of confidence or to store passwords in a safety deposit box or other secure location. Since transactions are essentially irreversible, if a password falls into the wrong hands, it could have disastrous consequences. Maintaining cryptocurrency in an international trust is a great long-term solution to ensure beneficiaries receive the full value of one's estate.

CONCLUSION

> Prosperity is a foundation but not a guiding principle for shaping life. Preserving it is even harder than acquiring it.
>
> **~ Ludwig Erhard**

When people think about asset protection, their first thought is probably that they are mainly for incredibly wealthy people or professionals in high-liability industries. That is only partially right. In reality, asset protection can provide great benefits for families in different income brackets and in a variety of situations. It is never too early to start creating an asset protection plan, and the only time when it is too late is once a lawsuit or claim has been filed. Do not wait too long to begin this process because it's impossible to know when one will need to have an asset protection plan in place.

While money should not be the main concern, it naturally is one of the first things on people's minds. It is natural for people to worry about

money, especially for those who have amassed larger amounts of wealth. Thinking about how to protect assets can create feelings of stress and insecurity. This is where an asset protection firm can help. Of course, it will help give peace of mind to know a plan is in place should an unexpected lawsuit were to happen.

A properly established and well-funded asset protection strategy can ensure both individual and familial protection from a variety of legal and financial threats. The legal strategies discussed in this book have existed for decades now and have excellent track records when it comes to deterring and defeating claims brought against them. The offshore jurisdictions have the most favorable legislation in the world when it comes to asset protection.

When starting on an asset protection journey, it's not necessary to completely alter the ownership of assets or the way wealth is controlled. An asset protection plan can begin with an assessment of potential liability and a roadmap of what steps to take over time to minimize it. Tasks as simple as reviewing and updating insurance policies, establishing limited liability companies, and better understanding applicable estate laws are

generally the best way to get started regardless of level of wealth. More comprehensive solutions such as domestic or foreign asset protection trusts can eventually be incorporated into a plan.

In this book we have discussed several strategies for protecting holdings, what works best for you will vary depending on circumstances and situation. When ready to learn more about how to best protect properties and oneself from the threat of a lawsuit it is important to consult and work with a knowledgeable professional. Together with an asset protection attorney, it's possible to create and execute a strategy that aligns with goals and protects real estate from the threat of lawsuits.

My goal is to help you protect your assets, so you can focus on what's important: Your business. Your family. Your future.

~ Blake Harris

BIOGRAPHY

Blake Harris is the founding principal at Blake Harris Law, where he assists clients throughout the world with Offshore Asset Protection. Having traveled to over 40 countries, Blake has built an extensive global network by meeting with trust companies, protectors, and bankers worldwide.

An accomplished author and international speaker, Blake has educated countless professionals through his continuing legal education lectures on asset protection and offshore planning. He has been quoted in numerous national publications, including Forbes, The Epoch Times, ABC, NBC, CBS, Fox News, and MarketWatch. Beyond these accolades, Blake boasts a significant social media presence with

hundreds of thousands of followers, further solidifying his influence in the field.

With a seasoned background in wealth management, Blake Harris previously worked with one of America's premier wealth management firms, advising high and ultra-high-net-worth clients on strategies to safeguard their assets. His passion for helping families cultivate and preserve their legacy inspired him to establish Blake Harris Law, a firm deeply committed to providing tailored solutions and peace of mind for its clients.

Blake's commitment to the field doesn't stop at his firm. He has consistently been recognized as a "Rising Star" by Super Lawyers Magazine for the past 5 years, is an AV® Preeminent™ rated attorney, a testament to his dedication and excellence in the realm of asset protection. He is also the author of the book "Don't Let a Lawsuit Take Away Everything," a guide to provide an understanding of the intricacies of asset protection.

A proud alumnus of the University of Florida, Blake obtained a degree in finance in 2007 and went on to earn his Juris Doctorate from the

University of Florida Levin College of Law in 2010, a top-tier law school.

Blake is an active member of the American Bar Association, International Bar Association, the Florida Bar since 2010 (Florida Bar number: 86486), and the Colorado Bar since 2013 (Colorado Bar number: 45942).

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The Blake Harris Law Team: Thank you for your hard work, support, patience, and most of all for your continued commitment to providing an excellent experience for every single Blake Harris Law client.

My father: He taught me more about life, business, and the law than anyone could ever ask for.

My mother: She instilled in me the compassion to understand the struggles of my clients, friends, and family.

My grandparents: For teaching me the value of hard work, consistency, and frugality.

My friends: For never letting me forget the importance of having them in my life.

The endless number of business partners, professors, accountants, financial advisors, bankers, professional trustees, experts, and other mentors who have trained and taught me, and who continue to support my clients and me every single day.

Blake Harris Law was founded with the goal of providing top-notch asset protection legal services. Our mission is to provide our clients with lifetime guidance and peace of mind. Our planning services are completed on a flat-fee basis.

Please contact us today to schedule your no-cost, no-obligation, initial consultation.

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